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DEPORTATION OFFICER'S HANDBOOK

PURPOSE

This handbook is intended to provide ready reference to operational and administrative matters relating to the Detention and Deportation function in the field.

To be most useful, instructions found in other publications will not be reprinted here. A list, by subject, is provided to direct deportation officers to the existing publication and only material which is not found in depth in other publications is included in this handbook.

The material included herein is not intended to be "Service policy." Existing Service policy, local policy, operations instructions, and regulations shall govern when a conflict arises with the material contained herein. This handbook is intended to provide suggested methods only.

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USE

This handbook is divided into two parts, Operations and Administration. Each chapter contains a reference list to all other relating publications.

First - Locate general topic in the index. The index is organized to follow the normal process of an alien from initial contact to closing, i.e. voluntary departure is the 1st Chapter since VD prior to hearing is normally the deportation officer's first involvement with the case.

Second - Turn to the first page of the desired chapter and locate the specific items of interest. Specific items are listed alphabetically in the far left column of the first page of each chapter.

Third - After locating the specific item in column 1, move to column 2 where relating forms are listed (if any). Then, move to column 3. If sufficient reference is cited in column 3, there may be nothing further on this item in this handbook. Simply refer to the cited references.

21.6/3:

Fourth - If no reference is cited in column 3, or if the referenced material is insufficient, move to column 4 where a chapter/paragraph number will be cited. For example, chapter 4, paragraph 7 will be shown as 4-7. Only the items which are not treated adequately in the existing references will be covered in the content of the handbook. Additional references, if any, will be given at the beginning of each paragraph.

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Departure

CHAPTER 1

VOLUNTARY DEPARTURE

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VOLUNTARY DEPARTURE

1 - 1 General

Reference: INA 242(b)(4), 8 CFR 242.5, 242.17(b), OI 242.1(c), 214.1(b), 103.1(a)(iii), 242.1(a)(25), 242.10, 245.5(b), 245.6(b), 248.1(d), 249.1(a), 252.3, INA 244(e).

Voluntary departure is a privilege which may be granted to certain eligible deportable aliens. The criterion for granting voluntary departure is set forth in INA 242(b), 8 CFR 242.5, OI 103.1(a)(iii), INA 244(e), OI 245.5(b), 245.6(b), 248.1(d), 249.1(a), 252.3.

Once a determination to grant voluntary departure (prior to OSC) has been made, the need for docket control must be determined next.

1 - 2 Docket Control

Not all of the instructions mentioned in Chapter 1 - 1 regarding the grant of voluntary departure specifically mention "Docket Control." Those instructions not mentioning docket control are open to the discretion of the granting authority.

Generally, cases departing immediately, such as I-274/274A or "satisfactory departure" cases, do not require docket control. The advantage of placing a case under docket control is the follow-up action taken by the docket office. Hence, where no follow-up action is required, no docket control is required.

1 - 3 Expense

Reference: INA 242(b)

Voluntary departure, at any time whether prior to or after OSC issuance, may be at the expense of the alien or at the expense of the Government.

The criterion for granting voluntary departure at Government expense is: is the removal at Government expense "in the best interest of the United States?" Embarrassment to the Service and medical problems, among other things, should be considered in determining if it is "in the best interest of the United States" to remove an alien at Government expense.

When an alien has been granted voluntary departure and removed at Government expense, care should be taken to leave written evidence in the alien's file indicating the date of removal and the cost of the removal. Form I-274/274A has a portion devoted to this at the bottom of the form. Cases, other than I-274/274A cases, should have a memo to the file indicating the above information.

1 - 4 Crewmen

Crewmen granted voluntary departure pursuant to OI 252.3 shall not be placed under docket control and shall not be handled by the deportation branch.

Generally, crewmen are ineligible to adjust status in the United States. However, they are not excluded from consideration for the privilege of voluntary departure.

A crewman granted voluntary departure pursuant to 8 CFR 242.5 who is pursuing an immigrant visa application through an American Consulate should have travel documentation valid for entry into the foreign country in which the American Consulate having jurisdiction over the visa application is located. See OI 242.10(b).

1 - 5 Docket Notations

Reference: AM 2798.

Voluntary departure and grants of extensions shall be noted on the face of the I-154 and I-161 in the blocks provided. Each time that voluntary departure is extended, a notation indicating the reason, i.e. "8 CFR 242.5(a)(2)(vi)(A)" or "hospitalized at Valley General for broken back" should be made on the reverse of the I-154 or I-161.

Field offices not having a docket should prepare Form I-156 with the above information and forward same to the appropriate docket office.

1 - 6 Medical Reasons

Any request for extension of voluntary departure based upon a claim of medical necessity should be supported by documentation from competent medical authority and a statement indicating who is paying the expense.

Generally, medical necessity is due to an inability to travel or non-availability of treatment in the alien's home country.

An alien's ability to travel unless clearly unable, should be determined by the U.S. P.H.S. (See Forms I-114 and I-141).

A claim of "non-availability of treatment" should be supported by a letter from competent medical authority in the alien's home country certifying that there is no treatment available in that country for the alien's specific medical problem. Note that medical treatment need not be available in the alien's home town as long as it is available in his home country, if he can travel, he can be expected to relocate to the area in his home country where medical treatment is available. This should not be an undue hardship as the alien has already relocated from his home town to be in the United States.

Medical treatment at the expense of any State or Federal Government Agency may be considered as an adverse factor.

Dental treatment, is not generally a valid medical reason for granting an extension of voluntary departure.

You are cautioned, however, to use extreme care in handling any claim to medical necessity so as not to embarrass the Service. This does not mean "when in doubt - grant" as the Service can be criticized for allowing an alien to have a "free ride" medical treatment at Government expense as well as for forcing a poor sick child out of the country.

1 - 7 Prosecution

An alien not in Service custody may be granted extensions of voluntary departure to face criminal charges in court if it is to the advantage of the United States. In fact, Sec. 46.3(f) and Sec. 46.2 of 22 CFR grants authority to prevent the departure of aliens whose departure is deemed prejudicial to the interest of the United States, specifically, "any alien who is a fugitive from justice on account of an offense punishable in the United States." Consult Section 215 for instructions relating to the prevention of an alien's departure from the United States.

An alien named in a civil suit, however, is not normally extended for this reason as depositions can be taken which will suffice in court, or at a minimum, the alien can be paroled in at the written request of the court if needed.

1 - 8 Witness

Any law enforcement agency that requires an undocumented alien as a witness in a prosecution case must submit a request in writing to the District Director. This request should state the reason for requiring the alien's continued presence in the United States and the approximate amount of time needed. The request should be signed by a second line supervisor of the law enforcement agency concerned and mailed directly to the District Director having jurisdiction over the alien's place of residence. Again, the best interests of the Government must be determined in granting or denying such a request. Under no circumstances shall a request of this nature be granted if submitted by the alien without support of a law enforcement agency.

1 - 9 Workman's Compensation

Aliens who have been injured on-the-job may attempt to litigate a workman's compensation claim. The alien's physical ability to travel must first be determined as in paragraph 1 - 6 supra, and secondly, the need for his continued presence must be determined. Normally, after the medical evaluations have been completed, an alien's presence in the United States is no longer required to complete litigation in a workman's compensation case and the alien need not remain in the United States during the entire period. If depositions will not suffice, the alien may apply for parole into the United States based upon a written request from a U.S. court.

1 - 10 Travel Document

The responsibility of obtaining and maintaining a valid travel document lies with the alien. However, if it is in the best interest of the Government, an officer of this Service may assist an alien in obtaining a valid travel document.

1 - 11 Revocation

Reference: 8 CFR 242.5(c)

Prior to hearing, voluntary departure may be revoked by any district director, officer-in-charge, or chief patrol agent if ascertained that the voluntary departure should not have been granted.

After a hearing, only the immigration judge can withdraw a voluntary departure granted by that judge. If, subsequent to the hearing, it is ascertained that voluntary departure should not have been granted, a motion to reopen should be made to the immigration judge to reconsider the grant of voluntary departure. Extensions of voluntary departure granted by any district director may be revoked by any district director if it is ascertained that such extension should not have been granted.

Written notice of revocation is not required in prehearing cases, however, it is good practice to insure that the alien is notified. The issuance of the OSC containing an allegation stating "on ____________ you were granted the privilege of departing voluntarily from the United States, without the issuance of an order to show cause, on or before ____________. That privilege has been withdrawn" constitutes notice of revocation. After OSC, but prior to hearing, the notice to appear for hearing should be sufficient notice of revocation of voluntary departure. In all cases prior to hearing the alien will not be deprived of any privilege since request for voluntary departure can be made at the hearing. After a hearing, however, written notice of revocation of voluntary departure is a good practice.

1 - 12 Reinstatement

The district director has the authority to reinstate voluntary departure nunc pro tunc for any case in which the district director had the authority to grant or extend voluntary departure. Obviously, an order of deportation from the immigration judge or BIA cannot have voluntary departure "reinstated" since the district director lacked the authority to grant or extend voluntary departure in the first place.

Matter of Villegas Aguirre (13 I&N Dec. 139) has been modified by the BIA in Matter of Chouliaris (ID 2572 decided by BIA 3-39-77). Where previously the amount of time to depart granted by the immigration judge would be reinstated in full after appeal to the BIA, the new formula for reinstatement of voluntary departure time is:

If an immigration judge provided for a voluntary departure period of 30 days or less, the Board shall reinstate the original grant. Where a period exceeding 30 days has been granted, respondent will be given 30 days from the date of the Board's decision in which to depart voluntarily. Where the original grant has not yet expired, and the remaining period exceeds 30 days, respondent shall be permitted to depart voluntarily on or before the date specified by the immigration judge.

1 - 13 Failure to Depart

(a) Prior to OSC - failure to depart within the time specified should result in the issuance of an OSC. However, the district director is not precluded from extending voluntary departure, without request of respondent, whenever it is in the best interest of the Government to do so. Attempts should be made to verify departure, unless there is reason to believe respondent has not departed, before referring to Investigations for consideration of OSC.

To expedite the issuance of an OSC, the information necessary for Investigations to prepare Form I-265 may be secured by the deportation branch. This will, in many cases, reduce the time for OSC processing.

(b) After OSC but prior to hearing - failure to depart in this instance should result in the referral of the case for hearing. Again, however, the district director may extend without request.

(c) After hearing - a warrant of deportation may be issued the day following the expiration of a voluntary departure period which was granted with an alternate order of deportation. However, the district director may extend voluntary departure as a matter of discretion. In any case in which the district director extends voluntary departure, a Form I-210 may be mailed to respondent, however, it is not necessary to notify the respondent of an extension unless the respondent has made a request for extension.

1 - 14 Visa Eligibility

All of 8 CFR 242.5(a)(2)(vi) relates to aliens who are "admissible to the United States as immigrants." Therefore, the deportation officer must be able to determine visa eligibility in order to determine if further extension of voluntary departure is warranted. Furthermore, the sooner that an alien under docket control can process for a visa, the sooner the case can be closed.

Consult Chapter 23 for detailed instruction in visa processing.

of Departure

CHAPTER 2

VERIFICATION OF DEPARTURE

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VERIFICATION OF DEPARTURE

2 - 1 General

Reference: 231 INA, 8 CFR 231.1(d), 8 CFR 231.1, 215 INA, 8 CFR 215, 290 INA, and AM 2790

Section 215 of the Act gives the Attorney General the authority to control departures. Section 290 of the Act gives the Attorney General the authority to maintain indices necessary to aid in the enforcement of the Act. AM 2790 gives specific guidance in the use of Form I-94. (arrival/departure record)

The departure of any alien from the United States is generally reported on Form I-94. The form is forwarded to the Central Office Index unless it is stamped "Under Docket Control" in which case it is forwarded to the cited docket office for clearance and then forwarded to CO Index.

At present, the need to give concise instructions to departing aliens cannot be overemphasized. Any alien you have had the opportunity to come in contact with is a potential student of the departure verification school. In other words, five extra minutes of explanation to an alien about to depart would save you five hours extra work in attempting to verify his departure.

2 - 2 Arrival Departure Record

Reference: AM 2790.36, para 6

All aliens departing the United States under docket control should be provided with a Form I-94 to verify their departure and, if possible, given instructions in its use depending upon the mode of departure; air, sea, or land border.

2 - 3 Airlines

Reference: 231 INS, 8 CFR 231.2

The airlines are, with some exceptions, required to submit an I-94 for each alien departing foreign. At a typical airline operation, the traveling public checks in with an airline representative at a counter (usually some distance from the actual departure gate.) The airline representative will ask "What passport are you traveling on?" and, then request to see the passport. When an alien presents his passport, the airline representative will quickly look for the Form I-94 and, if not present, will prepare a duplicate I-94 without further questioning the alien. This means that if the alien has an I-94 stapled to a Form I-210 in his pocket, it will not be collected. Furthermore, the airline's duplicate I-94 will not be stamped "Under Docket Control" nor will it necessarily be in the same name as contained on the alien's original I-94. Therefore, it is important that the alien have the correctly stamped I-94 in his passport or understands that the I-94 must be presented to the airline representative.

2 - 4 Canadian Border

Per reciprocal agreement with Canadian Immigration Authorities, Canadian Immigration officials will ask for and lift, Form I-94 from non-Canadian nonresident aliens entering Canada and will place the Canadian admissions stamp upon the reverse of Form I-94 prior to giving the I-94 to U.S. INS. However, OI 212.11 should be consulted to ascertain if the alien was within one of the certain classes of aliens who are permitted to return to the United States "in the same status" as had prior to departure.

2 - 5 Mexican Border

The United States does not have a reciprocal agreement with Mexico thus the Mexican land border is one of the most difficult departure points for an alien to verify his departure. For example, an alien departing on foot to Tijuana will only encounter Mexican authorities and no United States Immigration officers. The alien, if really interested in verifying his departure, will have to enter Mexico, cross the foot bridge to the other side of the highway, and wait in line with other aliens seeking admission to the United States in order to present his I-94 to a U.S. INS officer.

2 - 6 Fraud

It should be obvious from paragraphs 3, 4, and 5 that the potential for fraudulent verification of departure is great. The deportation officer must assume that fraud can be accomplished if the alien wishes to fraudulently verify his departure. Therefore, the officer must consider the motives to commit fraudulent verification of departure.

Generally speaking, aliens under voluntary departure prior to OSC issuance lack strong motivation for fraud as most are aware that they will not be "deported" for failing to depart at this stage of the process. Aliens who are under alternate order of deportation (V/D/DEP) have a greater incentive for fraud since they do not want to invoke the order of deportation. Aliens at large on delivery bonds have, perhaps, the strongest incentive to fraudulently verify their departure since the loss of money may be involved.

A fingerprint should be placed upon the reverse of the I-94 whenever possible. The deportation officer can utilize the same factors which motivate an alien to attempt fraudulent verification to motivate aliens to actually verify their departure. That is the desire to avoid the deportation order and the desire not to lose money. The deportation officer should consider paragraphs 3, 4, and 5 and further consult Chapter 7 for special procedures in bond cases.

2 - 7 Bond Cases

Reference: 8 CFR 103.6, OI 103.6(i)(4)(i)

As pointed out in paragraph 6, the motivation to attempt fraudulent verification in delivery bond cases is very high. Many aliens believe that mere departure constitutes "substantial performance" of the conditions imposed by the bond; it does not (see Chapter 8). The alien should be informed that a physical verification by a U.S. immigration or consular officer is required to verify his departure. (Form I-392 may be utilized for this purpose.) Aliens departing across the land border to Mexico should make the extra effort to present the Form I-392 to a U.S. immigration officer. An alien departing by air should seek out a U.S. consular officer in a foreign country. Why a consular officer rather than the airline representative? Consider the scenario developed in paragraph 3, the alien presented his passport, his I-94 was lifted and stamped, and his passport was returned with a boarding pass instructing him to go to gate "Z." Remember that gate "Z" is some distance from the airline representative's desk. The alien can proceed toward the gate, give or sell his boarding pass and ticket to a friend who happened to be departing anyway, and the alien can leave the airport. The friend boards the airplane with no further check of identification and both the manifest and the returned I-94 will reflect that the alien (not his friend) departed the United States.

2 - 8 American Consulates

If you wish to enlist the assistance of an American consular officer in verifying a departure you must make it as easy as possible for both the alien and the consular officer. Try and provide the alien with the address of the nearest consulate, if possible, rather than making the alien search for one (granted that most aliens do know the locations of the U.S. consulate but this should not be assumed.) Secondly, consider that the consular officer has a large volume of work and, if you wish a quick response, brief but detailed instructions to the consular officer should be placed on the Form I-392 or G-146 and your return address should be provided in a convenient place.

2 - 9 Manifests

Sea departure manifests (I-418) are maintained on microfilm at San Francisco and New York.

Airline manifests (other than Forms I-94) are usually kept at the airport for several days and then forwarded to a central location. If you wish to search the manifest for an alien's name it is usually better to do so while the manifest is still at the airport. If the airport has already forwarded it to the airline's central location, a letter of request is normally required (see attached sample). Liaison with local airline representatives is necessary to develop a list of names, addresses, and phone numbers of airline personnel who can assist you in searching for a name on a manifest.

2 - 10 Immigrant Visa File

Quite often, an alien will depart and reenter the United States with an immigrant visa without Detention and Deportation receiving notification. If any of your cases were processing for a visa, a quick check with RA&I using the married name or a variation of the name and no "A" number may yield the new immigrant visa file. Once obtained, it can be assumed that the alien departed prior to the date that the immigrant visa was issued. (See paragraph 11 for use of MIRAC.)

2 - 11 MIRAC

Master Index Remote Access

As more terminals become available, Detention and Deportation personnel are utilizing the information available through MIRAC. The MIRAC contains information relating to the creation and location of all "A" files above the 11,000,000 series.

2 - 12 Alien Address Report - Form I-53

The annual alien address reports are on file in the Central Office and can be searched to ascertain an alien's address usually six months after the report is due. FTS phone is 633-1915.

2 - 13 Death

Information concerning the death of an alien should be followed in order to obtain a death certification from the appropriate office of Vital Statistics. A copy of the death certificate should be placed in the file for closing. Form G-304 may be utilized to request a search of the records.

United States Department of Justice

Immigration and Naturalization Service

Washington, D.C. 20536

File No. ____________

Date ____________

The records of this office show that ______________________________

____

presented information to this office showing departure on your
flight No. ______________ on ______________
from ______________ to ______________.
This office has no record of departure from the United States.

To assist in completing our records, please fill in below on this form and return it in the attached self-addressed envelope, which requires no postage if mailed anywhere in the United States.

☐ The person inquired about:

Departed from United States at the port of ______________

on ______________ via ______________
(Note: If Form I-94 Arrival-Departure Record is available, please attach it to this form before returning.)

☐ The person inquired about did not depart on the above flight.

Signature ______________

Title ______________

Thank you for your cooperation in this matter.

Sincerely,

Enclosure

Chapter 3 -- Asylum

CHAPTER 3

ASYLUM

SUBJECT	FORMS	REFERENCE	PARA.
Adjustment of Status	I-485	209 INA, 8CFR 245.1	
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ASYLUM

3 - 1 General

Reference: 208 INA

The Refugee Act of 1980 (PL 96-212 dated 3/17/80) set forth all of the procedures for handling refugees and asylum requests in Sections 207, 208, and 209 of the INA. Additionally, the Refugee Act modified Sec. 243(h) of the INA relating to withholding of deportation. The result is that there are two distinct possibilities for relief, "asylum" and "withholding of deportation."

The criteria for qualification of a grant of "asylum" pursuant to Sections 207 and 208 are more stringent than the criteria for a grant of "withholding of deportation" pursuant to Section 243(h). See 8 CFR 207.1.

Of significant interest to the deportation officer is the effect of a grant. If asylum is granted pursuant to Sec. 208, (in one-year increments), then docket control is not necessary as Adjudications will maintain a call-up to review the case each year -- see OI 208.2. ←12 However, a 243(h) grant will continue to be for an indefinite period and will be reviewed by the deportation officer pursuant to AM 2798.

Deportation officers should be familiar with the general definitions of a refugee and the basic eligibility requirements in order to advise aliens under their control of their right to apply for such relief.

3 - 2 Application Prior to OSC

Reference: 208 INA

Any request for asylum prior to the issuance of an order to show cause should be made on Form I-589 and referred to the Adjudications Section for action. The deportation officer should note Form I-161 to indicate the date filed and forwarded to the Adjudications Section.

3 - 3 Application After Issuance of OSC

Reference: 208 INA

Any application for asylum after the issuance of an order to show cause should be made on Form I-589 and must be forwarded to the Immigration Judge for a decision.

3 - 4 Application After Final Order of Immigration Judge

Reference: 8 CFR 208.11, 8 CFR 242.17(c) and 242.22

Any application for asylum or withholding of deportation shall be treated as a motion to reopen and unless the application reasonably explains the failure to request this relief prior to the completion of the hearing, the motion will be considered frivolous. Accordingly, a stay of deportation is not mandated in any case involving a frivolous motion to reopen.

3 - 5 Docket Control

In a case in which asylum has been granted pursuant to Sec. 208, the docket card (Form I-161 or I-154) should be noted and placed in Category 6 of the docket to be counted as a "closed case." No deportation or VD statistical punch card will be prepared. Pursuant to OI 208.12(a)(ii)(6), the control of the case after a grant of asylum should be maintained by the Adjudications Section. This includes the responsibility for considering requests for extension of asylum status. Control of cases which have been granted withholding of deportation pursuant to Sec. 243(h) shall continue to be maintained on Form I-154 pursuant to AM 2798.

In any case in which an alien has applied for asylum, the deportation officer should refer the alien to the Adjudications Section having control over the application to consider any requests for employment authorization.

3 - 6 Immediate Action Case

Deportation officers should familiarize themselves with the type of cases set forth in OI 208.8 in order to recognize the need for immediate action. Furthermore, the deportation officer should be familiar with the policies and procedures for handling defectors and should note on this page the name(s) and phone numbers of the officers assigned this responsibility within the deportation officer's specific location.

3 - 7 Withholding of Deportation

Reference: 243(h)(1) and (2) INA

Any application for asylum filed with the Immigration Judge during the hearing or as a motion to reopen shall also be considered as an application for withholding of deportation.

Chapter 4 -- OSC/WA

CHAPTER 4

ORDER TO SHOW CAUSE/WARRANT OF ARREST

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Minors		8 CFR 242.3	
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Preparation	I-265	(See Form)	
Service of OSC	I-221, I-221s	8 CFR 242.1(c), OI 242.4	
Service of WA	I-200, I-221s, I-286	8 CFR 242.2(a), 242.3, OI 242.4	
Termination of Custody		8 CFR 242.2(a)	
WA	I-200, I-221s	(See Forms)	

OSC/WA

4 - 1 General

Reference for OSC: INA 242(b), 8 CFR 242.1, OI 242.1(a), OI 242.2, OI 242.3, OI 242.4, Appendix to OI 242, 8 CFR 264.1(b), 8 CFR 292.2 and AM 2798.

Formal proceedings to determine the deportability of an alien in the United States are commenced by issuance and service of either Form I-221 or I-221s. Form I-221 is an Order to Show Cause and Notice of Hearing. Form I-221s is a combination of Form I-221 and a Warrant of Arrest of an Alien (Form I-200).

An Order to Show Cause, hereafter referred to as an OSC, is an order for an alien to show cause why he should not be deported from the United States.

Reference for WA: INA 242(a), 8 CFR 242.2(a), OI 242.6(a)

A Warrant of Arrest is a written authorization to make an arrest. An arrest is defined as an actual or constructive restraint, seizure, or detention of the person, performed with the intention to effect an arrest and so understood by the person detained.

It is Service policy not to arrest, either with or without a warrant, a deportable alien against whom proceedings are being or have been initiated unless there is good reason to believe that some form of restraint should be placed upon his free movement.

An alien confined to a jail, prison, hospital, or other institution should not be taken into physical custody by the Service until a final order of deportation has been entered and the Service has completed all arrangements and is ready to effect the alien's deportation. These arrangements include procurement of the necessary travel document, ticketing, and scheduling of transportation out of the United States. Further, the Service may not incur any expense for the maintenance of an alien who is an inmate of a public or private institution at the time of commencement of deportation proceedings. Even though deportation proceedings are initiated prior to the time an alien becomes an inmate of such an institution, the Service must not incur the expense of his maintenance unless the alien was in physical custody of the Service when institutionalized and the expenses are specifically authorized by the Service.

The deportable alien who is being released from jail or prison upon completion of his sentence, or who is being released on parole (other than parole "for deportation"), or who is being released because charges against him have been dismissed, or because he has received a suspended sentence, may, of course, be taken into custody under the authority of an order to show cause and warrant of arrest and may be continued in Service custody (within the limitations of 242(c) INA) until deportation proceedings are completed and he is completely ready to depart. Generally, an alien who is granted a parole "for deportation" rather than an outright parole, should not be accepted into Service custody until he is completely ready for deportation. Some consulates refuse to issue the required travel document for the deportation of an alien "paroled for deportation" until the alien is actually released from all forms of physical custody, contending that he is not paroled or released from serving sentence if turned over to this Service for deportation prior to completing sentence without being allowed at large. Premature acceptance of custody under such conditions have, in the past, resulted in lengthy and otherwise unnecessary detention by this Service. In some cases the aliens had to be released from custody or returned to the institution. In other cases, the institutions have refused to take back aliens we could not deport even though they had been "paroled for deportation."

4 - 2 Application for OSC

Reference: OI 242.1(a)(8)

Application for OSC shall be made on Form I-265 when clear, unequivocal and convincing evidence establishes a prima facie case of deportability. This evidence is itemized on Form I-265 in sufficient detail to enable a reviewing officer to determine quickly whether or not a prima facie case has been established. The following special instructions should be considered:

OI 242.1(a)(6), OI 242.1(a)(19), OI 242.1(a)(23), OI 242.1(a)(25), and OI 242.9.

4 - 3 Issuance of OSC

Reference: 8 CFR 242.1(a) & (b), OI 242.2, Appendix to OI 242.

Generally, completed OSC's together with the evidence supporting them are submitted to the issuing officer for signature. In any case where there is doubt as to whether or not a prima facie case of deportability is established or as to the course of action to be followed, a request for an advisory opinion should be submitted to the Regional Office.

(The person named in the OSC is called the "respondent" and not an "alien" since his alienage has not yet been established at a hearing. At this point, alienage has only been alleged.)

Chapter 5 -- Detainees

CHAPTER 5

DETAINEES

SUBJECT	FORMS	REFERENCE	PARA
Admitting & Processing	I-200, I-203, I-221s I-122, I-135		
Aliens in Other Agency Custody	I-247		5 - 3
Attorneys	G-28	See Form	
Authority to Detain	I-200, I-286, I-274, I-205	242(a), 235(b), 243	
Baggage	I-77, I-43	See Forms	
Conveyance & Escort	G-391, I-386	See Forms	
Death		Chapter 33	
Deportation of Detained Aliens		AM 2798.82(c)	
Docket Control	I-154		5 - 1
Emergency Plans		AM 2798.93.39	
Escape		Chapter 33	
Expulsion Documents	I-205, I-210, I-274, I-296, I-94, I-94(Parole) I-216, I-741, I-164	See Forms	
Feeding		AM 2798.60, AM 2798.121 & 122	
Female Detained Aliens		AM 2798.80(b) AM 2798.81.12	
Fires and Explosions		AM 2798.97.41	
Foreign Consulate Notification	I-264	8 CFR 242.2(e), OI 242.6(e)	
Funds & Valuables		AM 2798.68.19	

CHAPTER 5

DETAINEES - (Cont'd)

SUBJECT	FORMS	REFERENCE	PARA
General			5 - 4
Health and Welfare		AM 2798.60	
Identification Documents		AM 2798.67(j)	
Injury		Chapter 33	
Juveniles		OI 242.6(c)	5 - 2
Mail		AM 2798.72.23	
Narcotics		AM 2798.89	
News Media Interviews		AM 2798.31	
Non-Service Detention Facilities	G-324	See Form	
Personal Property	G-589, I-387, I-43	See Forms	
Riots and Disorders		AM 2798.100.42 AM 2798.103.43	
Rules for Conduct for Detainees		AM 2798.83	
Search of Detained Aliens		AM 2798.66	
Sickness		Chapter 33	
Suicide or Attempted Suicide of Detained Alien		AM 2798.104.44	
Treatment of Detained Aliens		AM 2798.84.30	
Visitors		AM 2798.70.21	
Welfare & Social Agencies		AM 2798.86.31	

DETAINEES

5 - 1 Docket Control

Reference: AM 2298.04.6

Docket control for detained aliens should be maintained by use of Form I-154. The docket of detained cases should be kept separate from that of non-detained cases or at least flagged to indicate detention.

The detained case docket should be given priority over the non-detained docket and should be reviewed daily to avoid extra expense in detaining aliens longer than necessary.

5 - 2 Juveniles

Reference: OI 242.6(c)

For the purposes of detention by the Service a "juvenile" shall be defined according to the statutes of the state in which the detention takes place.

No juvenile shall be detained in a Service or non-Service adult detention facility whether or not he is accompanying a detained adult. If it is necessary to detain a juvenile he should be placed in a youth detention facility or a juvenile home. If no such facility is available he should be placed with a responsible charitable or social agency such as the Salvation Army, Home of the Good Shepherd, or a similar organization.

A child who is too young to be put into a juvenile home or youth detention facility should be placed with a responsible social or charitable agency or with a relative or friend until his case or that of his accompanying parent is resolved.

In the rare case in which a young child cannot be accommodated he and his accompanying parent should be released to a responsible agency or to a relative or friend.

5 - 3 Aliens in Other Agency Custody

Reference: OI 242.6(f), AM 2798.130

When an alien under deportation proceedings is confined in a mental, penal, or other institution, his deportation hearing should be completed and all arrangements for his deportation should be made prior to his release from the institution so he can be removed immediately upon being taken into Service custody. In order to ensure that the alien is released to INS, Form I-247 should be lodged as soon as possible with the agency detaining the alien.

5 - 4 General

Reference: INA 242(a)
8 CFR 242.2(e), OI 242.6(c), (e), OI 287.16

General Handling of Detainees: AM 2798.51 to 2798.141.

Specific Reference for Deportation Officer Use:
AM 2798.58, 67, 71, 72, 77 to 82, 86, 93, 121, 122 and 133 to 141.

Detention Officers Handbook: Chapter I; Chapter II B. #4 & #20; Chapter VII; Chapter XV; Chapter XXI; Chapter XXII; Chapter XXIII.

The purposes of a Service Processing Center are enumerated in Chapter VII of the Detention Officers Handbook. In essence, an alien is detained by the Service not as punishment but rather to ensure that he is available for any further Service proceeding. While an alien is detained of course the Service is responsible for his care and welfare and as such, each department of the Service Processing Center has an integral part to play. Not only detention officers, but deportation officers as well play an important part in detainee welfare. A deportation officer's dealing with a detainee can often mean the difference between an alien who is peaceful while detained and one who is troublesome and a security problem. A detainee who knows that someone is available to listen to his problems as they relate to his Immigration case and who feels his case is being handled as expeditiously as possible will usually be a fairly docile and cooperative one. It is for this reason that the efficiency and conscientiousness of the deportation officer should never be underestimated as an important factor in detainee control and supervision.

An addendum to this paragraph would be the function of a Deportation Officer who works in a Service Processing Center or who carries out escort duties in the event of emergency conditions or situations. The proper handling of detainees in the event of riot, fire, death, or escape is covered in AM 2798.93 to 2798.105 and in Chapter 33 and need not be enumerated here.

Chapter 6 -- Release on Bond, OR, OS

CHAPTER 6

RELEASE ON BOND, ORDER OF RECOGNIZANCE, ORDER OF SUPERVISION

SUBJECT	FORMS	REFERENCE	PARA.
Authority		INA 103, 242(a)(c)&(d)	
Bonds Posted by Individual or Corporation	I-352 & I-306 I-351 & I-301 I-305 & G-254	See Forms	6-4
Bonds Posted by Surety Company	I-312, I-352, & I-351	See Forms	6-5
Bond Riders	I-351	INA 242(a)	6-3
Control of Delivery Bonds	I-154	OI 103.6(b), AM 2798.06	
Custody Determination and Review	I-221s, I-286 I-342, I-249	See Forms	
Delivery Bond	I-352	See Form	
Exclusion Bond	I-352		6-8
General			6-1
Order of Release on Recognizance	I-220A & I-286 I-221s	INA 242(a), 8CFR 242(a), OI 242.6(b)	6-10
Order of Supervision	I-220B	INA 242(d), 8CFR 242(b), OI 242(b)	6-11
Prosecution While Under an Order of Supervision		8 USC 1252(d)	6-13
Reduction of Amount	I-305, I-352, I-391, I-154, I-301, I-351		6-7
Release on Bond	I-352 & I-305, I-306	INA 242(a) INA 242(c) 8CFR 242(a)	6-1
Reports by Aliens		INA 242(c)	6-2
Release on Recognizance	I-220A		6-10

CHAPTER 6

RELEASE ON BOND, ORDER OF RECOGNIZANCE, ORDER OF SUPERVISION - (Cont'd)

SUBJECT	FORMS	REFERENCE	PARA
Reporting Requirements Under Order of Supervision	I-220B	INA 242(d) 8 CFR 242(b)	6 - 12
Revocation of Bond	I-286	INA 242(a) 8 CFR 242(b)	6 - 9
Time Limitation of Authority			6 - 6

RELEASE ON BOND, ORDER OF RECOGNIZANCE, ORDER OF SUPERVISION

6 - 1 General

Reference: INA 242(a),(c),(d); 8 CFR 103.6; 8 CFR 242.2(a),(b), (d); OI 242.6(a),(b); OI 103.6

Once an alien is taken into Service custody pursuant to a warrant of arrest, a decision must be made whether he will be continued to be detained in physical custody or released. The decision will be made with the objectives of insuring the alien's availability for deportation proceedings as well as the consideration of public safety. If it is decided that the alien is to be released, a decision must be made as to the conditions for that release: the alien may be released upon the posting of a delivery bond (Form I-352) of some specified amount, not less than $500 or he may be released on his own recognizance (his personal obligation before the Service to appear when requested), using Form I-220A. Conditions of compliance are set forth on the respective release forms (I-352 or I-220A).

Once a determination is made as to alien's custody, the alien is provided with written notice of the determination (I-221s, I-286). The alien has the right to request a redetermination of his detention or the conditions for his release by an Immigration Judge (or by the BIA, if his custody was effected after a final order of deportation). If the alien requests a redetermination, the Immigration Judge will enter his decision with respect to custody on Form I-342. That decision may be appealed by either the alien or the Service to the BIA.

There is a six-month time limit from the time a deportation order becomes final during which the Service is authorized to take or to maintain custody control either by physical detention, or constructive custody through release under bond or recognizance. In other words, the Service has six months, "free and clear" to take or to maintain the above controls, while arranging for the alien's deportation. After that period, although the order of deportation is still viable, Service authority to detain ceases. Control after that period is maintained by placing the alien under an order of supervision. He is kept under this order until either his deportation is effected or his deportation order terminated.

When either Form I-286 or Form I-221s is issued providing for the release of an alien from Service custody upon posting bond of a specific amount, the alien may neither be released by posting a bond of a lesser amount nor released on his own recognizance. As a rule, once a bond in the specified amount is posted, an alien may not be continued in Service detention. However, acceptance of a bond could be declined if the alien were completely ready for deportation and scheduled deportation was imminent.

The bond for the release of an alien under deportation proceedings is executed on Form I-352 and is called a Delivery Bond. This bond may be posted by any individual, including the arrested alien, a corporation, or by a surety company approved by the Treasury Department to post bonds with government agencies. A list of approved surety companies is published in Treasury Department Circular 570 and is available at all Service offices.

6 - 2 Reports by Aliens Released on Order of Recognizance

An alien released on bond is required to make periodic reports to a Service office, either in person or in writing, at the discretion of the District Director. If the alien is of the criminal, immoral, narcotic, or subversive background classes and is required to report in person, he must report once each month. Other aliens required to report in person may not be required to report more than once monthly. Each time an alien reports in person, he may be questioned concerning his compliance with the conditions of his release. Aliens on bond who are not required to report in person are required to report in writing once yearly, during September and at such times as the District Director may require.

6 - 3 Bond Riders

Reference: 8 CFR 103.6(a)(2)(i), (ii), (iii); OI 103.6(i)

Certain restrictions or requirements may be placed on the alien's conduct, activities, and associates, and his movements from one area to another, by added conditions known as bond riders. Such restrictions cannot be unduly harsh or arbitrary and should relate to availability for Service process or prevention of activities inimical to the interests of the United States or public welfare. With respect to Delivery Bonds, all riders, including no work riders, must be approved in advance by the Regional Commissioner.

6 - 4 Bonds Posted by an Individual or Corporation

An individual or corporation can post a delivery bond for the release of an alien. As collateral security, they must deposit with this Service cash or its equivalent (i.e., certified check, bank draft, or postal money order) in the amount of the bond. These instruments should be drawn to the order of "Immigration and Naturalization Service, Department of Justice." If United States Treasury Bonds are posted, they must be of face value equal to but not exceeding the amount of the bond required. Treasury Bonds cannot be redeemable within one year from the date the bond is posted.

Note: United States Savings Bonds are not acceptable as collateral security because their ownership may not be transferred and they may not be cashed by anyone other than the person or persons to whom they are issued thereby rendering them nonnegotiable.

The following forms are used when a delivery bond is posted by an individual or corporation other than a surety company:

1. Form I-352, Immigration Bond, in duplicate. The original with all attachments are placed in the "A" file and the obligor's copy with attachments are furnished to the individual posting the bond.

2. Rider or riders, if required, are in duplicate, and a copy is to be attached to each copy of the bond.

3. Form I-393, Bond Control Card, is optional, since the control factor which replaces the bond card,

is the docket card itself.

4. Form I-305 is the receipt of Immigration Officer for collateral security deposited. See form itself for the number of copies prepared, format, and disposition of each copy.

5. Form I-301, Receipt of Depository for United States Bonds or Notes as Security (in triplicate), is utilized when United States Treasury Bonds or Notes are deposited as security. The original and duplicate are presented to the bank where the notes or bonds are deposited for safekeeping for the Service. The bank endorses the original, acknowledging receipt of deposit, and returns it to the originating Service office, keeping the duplicate for the bank's records. The receipted original is then forwarded to the Finance Section in the Regional Office. The triplicate is retained in the field office for one year.

6. Form I-254, Schedule of Collections, is used when cash or its equivalent (i.e. certified check, bank draft, or postal money order) is presented for posting of a bond. The deposit is made to Suspense Account 15X6697.

The following includes information to be ascertained and actions to be taken prior to execution of the Delivery Bond.

7. Before any alien in the custody of the Service is released under a Delivery Bond, the alien must have been properly served with an Order to Show Cause and a Warrant of Arrest (I-221s), which reflects the specific bond conditions. Form I-286, Notification to Alien, will be used to specify bond conditions when the warrant of arrest is at a date later than that of the Order to Show Cause or when the alien is returned to physical custody upon the revocation of prior release by the Service during deportation proceedings.

   If the Service has conditioned the release of the alien upon the posting of a delivery bond of a specific amount, and if the alien has waived a redetermination hearing before an Immigration Judge, or if the custody status determination is only appealable to the BIA, that will be the amount of the bond for immediate release. Unless or until the conditions for detention or release are changed by an authorized Service officer (see 8 CFR 242.2(a)) or by appellate authority, Service officers are bound by those conditions and may not deviate from them.

In many custody cases, however, the alien will request a redetermination by the Immigration Judge. In that case, the amount of the bond for release (or condition of "release on recognizance") will be that specified on Form I-342, Determination of the Immigration Judge with respect to custody.

Although redetermination hearings are quite prompt, an alien or obligor will sometimes wish release before such a hearing, even though a hearing has been requested. Under those circumstances, the alien can only be released by posting the amount of the bond requested by the Service. These conditions for release, can, of course, be modified later by the Immigration Judge when the custody hearing actually occurs. The same is also true if a determination is appealed to the BIA. Obviously, when reasonable, it is better to defer acceptance of a bond when a redetermination hearing is imminent. This will avoid the possibility of having to accept posting of two bonds.

8. Before the acceptance of a bond can even be considered, we must be sure that the alien is in the constructive custody of the Service and not in the actual custody of another Government agency under a charge unrelated to any immigration process, e.g., state prison or hospital (see Matter of Lehder, I.D. 2337 (BIA, 1975).

9. Any potential obligor should be informed of the amount of the bond which will be required for the release if that information is available at the time of the potential obligor's inquiry. If the alien has recently been taken into custody, the obligor may be referred to the Investigation Unit

responsible for the issuance of Order to Show Cause and Warrant of Arrest. All potential obligors should be encouraged to use certified cashier checks. This type of collateral is much easier for the Service to safeguard and reduces the paperwork and manhours needed to post the bond, maintain it, and return the funds, if cancelled.

10. If at all possible, any potential obligor, before actually posting the bond should be given an opportunity to read the conditions and terms of the delivery bond. He should also be advised as to the steps involved in the return of his money, should there be compliance with the bond (see Chapter 8, Bond Breach and Cancellation).

6 - 5 Bonds Posted by Surety Company

Reference: 8 CFR 103.6(b), AM 2974.03

When a surety company posts a delivery bond for the release of an alien, the following forms are prepared or presented:

1. Form I-352, Immigration Bond, in duplicate. The original, together with attachments, i.e. riders, power of attorney, etc., is placed in the "A" file and the duplicate is furnished the surety company.

2. The power of attorney, in duplicate, showing that the agent signing the bond for the surety company has the authority to execute the bond in the company's behalf.

3. Riders, if any, in duplicate, to be attached to and become a part of the bond, Form I-352. Rider, Form I-351, Part (C), should be attached if the conditions provided therein are desired.

4. Form I-393, Bond Control Card, is optional. The docket card (Form I-154) is the controlling bond control form.

A list of surety companies, which have been approved to post bonds with Government agencies is published in

Treasury Department Circular 570, and is available in all Service offices. It is typically updated by notice from the Regional office.

Cash, U.S. bonds, or notes, etc., are not required as collateral security when a delivery bond is posted by a surety company. It is sufficient that an approved company provide a valid power of attorney, an instrument which must be attached to the bond showing the authority of the agent of the surety company to execute an immigration bond.

Care must be taken that the power of attorney actually authorizes the posting of an immigration bond, otherwise the surety company may maintain, and rightfully so, that the agent had no authority to act in the company's behalf.

Although the docket clerks will usually prepare the necessary forms in the posting of a bond, because Deportation Officers must review them for completeness and accuracy in accepting the bond.

6 - 6 Time Limitation of Authority

Reference: INA 242(a), 242(c), 8 CFR 242.2(a)

The Service has authority to detain an alien, pursuant to a warrant of arrest, from the time deportation proceedings are begun by issuance of an Order to Show Cause until a date six months after the date upon which the order of deportation becomes final.

Because of this six-month period, an officer must know when a deportation order becomes final in order to determine when authority to detain under the warrant of arrest ceases. See OI 242.20; 8 CFR 243.1; if the proceedings undergo judicial review, the six-month period tolls from the date that the final order of the last court of review becomes effective; if the alien is legally detained under proceedings other than an immigration process (e.g. state prison), the order of deportation is considered final for detention purposes as of the date of the alien's release (see 242(c)). Tolling of the time stops if an alien absconds. If the alien is granted voluntary departure with an alternate order of deportation, the date when the period of voluntary departure expires and the alternate deportation order becomes effective, is the date for the six-month period to begin. (See United States ex rel. Guinlu v. Shaughnessy 117 F. Supp. 473, affirmed without opinion 209 F. 2d 959 (2d Cir.); and United States ex. rel. Lan Tuk Man v. Esperdy 280 F. Supp. 303 (1967)).

The authorized period for detention not only encompasses actual physical custody by the Service, but constructive custody in the form of any restraint on his free movement as imposed by release on a delivery bond or on an order of recognizance. Consequently, upon the expiration of the sixth month period following the date an order of deportation becomes final for detention purpose, the alien, as a rule, cannot be taken or continued in physical custody, released or continued on bond or on his own recognizance. Any outstanding bond or order of recognizance must be cancelled. After the six-month period, control is maintained with an Order of Supervision (I-220B) (see subject heading, Supervision, Order of).

An exception to continuing the alien in detention upon the expiration of the six-month period, would be when the alien is completely ready for deportation and scheduled deportation is imminent (8 CFR 242(d)).

Upon the entry of a "final order," the main objective of the Service in controlling the alien's custody shifts from assuring his availability for the deportation hearing to executing the order, whether it be voluntary departure or an order of deportation. Of course, maintenance of public safety and security is a consideration in controlling the alien's custody throughout the deportation proceeding.

In order to carry out effectively the expulsion mandate, statute (242(c)) authorizes the Service a period of six months after the deportation order becomes final to determine, in its discretion, whether the alien is to be taken into custody, continued in custody or released on bond or order of recognizance.

In actual practice, once a final order of deportation is entered the imposed custody conditions will generally not be changed. It is important to remember, however, that the Service, in order to protect the public security and safety or to ensure the alien's availability for deportation, has the power to revise or modify the previous custody determinations.

After the six-month period has tolled, the alien cannot be taken into custody under warrant of arrest. And, he can then only be taken into custody under the authority of a warrant of deportation if actual deportation is imminent.

6 - 7 Reduction of Amount

When an alien who was released on a cash delivery bond, later has the amount of the bond reduced by the Immigration Judge or District Director, the following procedure should be taken to replace the original bond:

The obligor's receipt (I-305) and his copy of I-352 are surrendered to the Service office of issuance. A new bond (I-352) is prepared in the new amount, a new receipt (I-305) is prepared in the new amount, yet the original bond number is assigned. An I-391 cancelling the original is prepared and signed and dated by the obligor. Across the face of the I-391 and original I-305 is written "Bond Reduced from $________ to $________." The bond cancellation notice (I-391) and original I-305 and new I-305 finance copies will be mailed to Regional Finance Office. Finance will then cancel only the amount of reduction.

6 - 8 Exclusion Bond

Reference: See Form I-352 Part G. #4

This bond is formally called "Bond for Release of Alien Under Exclusion Proceedings." This is the least frequently used immigration bond, yet because it is an "appearance" bond it is sometimes confused with a delivery bond. Both bonds are appearance bonds in the sense that they are both conditional on a contractual promise to have the alien appear, each time the Immigration Service requests his presence. However, while the requested demand for appearances regarding delivery bonds relate to deportation proceedings, appearances under "exclusion bonds" relate to exclusion proceedings. It is important to remember that when the deportation and detention branch is detaining an alien for exclusion proceedings that he not be mistakenly released on a delivery bond. The acceptance and posting of the exclusion bond is normally accomplished by travel control. However, on occasion DD&P will be responsible for posting and acceptance. Control of the bond and its review for cancellation or breach is also a travel control function. The Deportation and Detention Branch in pursuing the exclusion and deportation of an alien who under an "exclusion" bond, should pass along all information necessary for bond review to the Travel Control Branch.

Please note that should the alien, who is released on an Exclusion Bond, be admitted in the exclusion proceeding as a nonimmigrant on the condition that a maintenance of status and departure bond be posted, the terms of the exclusion bond provide that the obligor agrees to the conversion of the exclusion bond to a maintenance of status and departure bond for the same amount.

6 - 9 Revocation of Bond

The release of an alien on bond may be revoked at any time in the discretion of the District Director, Deputy District Director, or Acting District Director, and the alien may then be taken into physical custody and detained. (Sec. 242(a) of the Act; 8 CFR 242). The issuance and service of a new warrant of arrest is not required.

However, when a bond is revoked and the alien is returned to custody, the alien must be notified on a Form I-286 of the new conditions set for his detention or release and must be informed of his right to appeal such new conditions.

6 - 10 Order of Release on Recognizance

When an order to Show Cause on Form I-221s or Form I-286, issued with the warrant of arrest, provides for the release of the alien on his own recognizance, an Order of Recognizance, Form I-220A, is issued in duplicate by the District Director, Deputy District Director, Acting District Director, or an officer specifically authorized by the District Director to exercise this authority in the name of the District Director. A copy of the order is served personally on the alien. His signature of acknowledgement is obtained on the original order and it is placed in the alien's file.

The reporting requirements are the same for an alien released on recognizance as for one released on bond. The principles discussed under "Revocation of Bond" also apply to revocation of an order of recognizance and return of an alien to custody.

6 - 11 Order of Supervision

Frequently the Service is unable to effect an alien's deportation before the expiration of the period during which the Service has authority to detain him or to release or continue him under bond or recognizance. When authority to detain ceases, an alien who is then in custody must be released.

When our authority to detain ceases and a warrant of deportation is issued or is outstanding, the alien must be placed under an order of supervision, Form I-220B. There is no appeal from Service action placing an alien under an order of supervision nor from the provisions of that order. An alien must be placed under an order of supervision even though he was never taken into custody under a Service warrant of arrest. When an alien is granted voluntary departure with an alternate order of deportation, Service authority to detain him does not cease unless or until the deportation order has been invoked and six months "free and clear" have elapsed since the deportation order was invoked.

6 - 12 Reporting Requirements Under Order of Supervision

The bond or order of recognizance under which an alien has been released must be cancelled when Service authority to detain ceases.

Section 242(d) of the Act provides that by regulation the Attorney General shall require any alien released on supervision:

1. To appear from time to time before an Immigration Officer for identification;

2. To submit, if necessary, to medical and psychiatric examination at the expense of the United States Government;

3. To give information under oath as to his nationality, circumstances, habits, associations, and activities, and such other information, whether or not related to the foregoing, as the Attorney General may deem fit and proper; and

4. To conform to such reasonable written restrictions on his conduct or activities as are prescribed by the Attorney General in his case.

The reasonable written restrictions on his conduct or activities have been limited by regulations, 8 CFR 242.2(d), and by court decisions, to relate only to the availability of the alien for deportation. Thus, the order of supervision cannot require that the alien conduct himself in a lawful and orderly manner, or that he not frequent certain establishments, or that he not associate with certain persons, or that he not drink intoxicating liquor, etc.

Although criminal proceedings may be brought against an alien for violation of the conditions of supervision, he cannot be taken into custody under a Service warrant of arrest because authority to detain under the warrant of arrest has ceased. Aliens under supervision are required to report to a Service officer in person at least once each year and more often if the District Director deems more frequent reports necessary. Whenever such reports are made, the alien is questioned as to his compliance with the terms of his supervision. At least once a year he must be questioned and his file reviewed to determine whether he appears eligible for adjustment of his status to that of a lawful permanent resident and if not, whether his deportation could or should be effected.

6 - 13 Prosecution While Under an Order of Supervision

If an alien who is under an order of supervision willfully violates the conditions of that order, he commits a criminal offense and may if convicted be fined not more than $1,000 and imprisoned not more than one year or both.

Chapter 7 -- Hearings

CHAPTER 7

HEARINGS

SUBJECT	FORMS	REFERENCE	PARA
Attorneys, Government	I-265	8 CFR 242.9 8 CFR 242.16	7 - 3
Attorneys, Respondent	G-28	INA 242(b), INA 292, 8 CFR 242.10, 8 CFR 292	7 - 4
Hearing, Adjournment	I-469	8 CFR 242.13	7 - 8
Hearing, Conduct	I-167	INA 242(b), 8 CFR 242.14, 8 CFR 242.18, 19, & 20, OI 242.7 & 8	
Hearing, Outcomes	I-38, I-39, I-167, I-470, I-471	INA 242(b), 8 CFR 242.19, & 20	7 - 9
Hearing, Postponement and/ or Reschedule	I-293	8 CFR 242.13	7 - 7
Immigration Judges		INA 101(b)(4), INA 242(b), 8 CFR 100.4(e), 8 CFR 242.8	7 - 2
Interpreters		8 CFR 242.12	7 - 6
Order to Show Cause	I-221, I-221s	INA 242(b), 8 CFR 242.1, OI 242.1	
Place of Hearing			7 - 5
Recognized Organizations	G-28	INA 292, 8 CFR 292	7 - 4
Trial Attorney			7 - 3

HEARINGS

7 - 1 General

Reference: INA 242(b); 8 CFR 242.1; OI 242.1; Palmer v. Ultimo, 69 F.2d1

A hearing before an immigration judge is, in the words of the statute, "the sole and exclusive procedure for determining the deportability of an alien." An alien cannot be removed from the United States involuntarily without recourse to a deportation hearing.

Exclusion proceedings, which prevent the entry of an alien into the United States are covered in Chapter 21 of this Handbook.

7 - 2 Immigration Judge

Reference: INA 101(b)(4); INA 242(b); 8 CFR 100.4(e); 8 CFR 242.8

An immigration judge, previously known as a special inquiry officer, is the officer authorized to conduct deportation proceedings. Immigration judges are not under the supervision of the District Director. As professional employees of the Service, they are under the General direction of the Chief Immigration Judge in Washington, D.C.

7 - 3 Trial Attorney

Reference: 8 CFR 242.9; 8 CFR 242.16(c); OI 103.1(e)(11)

The use of trial attorneys is not mandated by statute. 8 CFR 242.9, which outlines the duties of the trial attorney, seems to indicate that they are only required in more complex cases. As a matter of policy, they should always be requested when the alien is represented by counsel, or when deportability is contested.

7 - 4 Respondent's Counsel

Reference: INA 242(b), 8 CFR 242.10, 8 CFR 292

In accordance with due process guarantees of statute and precedent court decisions, the respondent in a deportation proceeding is assured the right to representation by the counsel of his choice, at no expense to the Government, during the course of a deportation hearing. While not specifically stated in statute or regulation, counsel for the respondent has the duty of insuring the rights of the respondent are fully protected, and that he obtains whatever benefits and reliefs are due him.

Not all counselors will be attorneys admitted to the bar. For those individuals who may represent aliens before the Service, please see 8 CFR 292, and the list of recognized organizations published by the Board of Immigration Appeals.

7 - 5 Place of Hearing

Reference: Mastoras v. McCandless, 61 F.2d 366 (3rd Cir. 1932); La Franca v. INS, 413 F.2d 686 (2nd Cir. 1969); Chlomos v. INS, supra; Matter of Seren, I.D. 2474; Matter of K., 5 IN 347 (1953).

Deportation hearings are usually held in the district where the alien is encountered. Prior to commencement of the hearing, the District Director has jurisdiction over requests for change of venue. After the hearing has begun, the matter must be determined by the immigration judge.

7 - 6 Hearings - Interpreters

Reference: 8 CFR 242.12

There is no provision in statute or regulation requiring the presence of a qualified interpreter at a deportation hearing. However, it is the responsibility of the office requesting the OSC (on Form I-265) to indicate if the services of an interpreter are necessary.

7 - 7 Postponements and Adjournments

Reference: 8 CFR 242.13

See cited reference for types of postponements. As a practical matter, postponements may be employed as a delaying tactic by some attorneys. Since the regulation only requires that "good cause" be shown for a postponement, some are listed here:

1. Lack of counsel. See 13 INA 798; please note this is an exclusion case, the BIA held such advice "may be desirable."

2. Counsel, witness, or respondent not available.

3. Request for investigation. Cases may be adjourned sine die for an investigation as to eligibility for a claimed relief. Such investigations should be requested on Form I-469.

7 - 8 Decision of Immigration Judge and Possible Outcomes

Reference: INA 242(b), 8 CFR 242.19, 8 CFR 242.20

There are three possible outcomes of a deportation hearing: (1) an order of deportation; (2) an order of deportation combined with an initial grant of voluntary departure, the so-called alternate order; (3) termination of proceedings.

1. Orders of Deportation. The so-called "straight" orders of deportation are most commonly encountered in detained cases, and always in those cases where the alien is statutorily ineligible for voluntary departure. A summary decision will be entered on Form I-38. If the case is sufficiently complex, the order will be entered in brief form, giving the arguments and findings of the Immigration Judge.

2. Alternate Orders. Alternate orders are common in noncustody cases where the alien is statutorily eligible for the privilege of voluntary departure. Summary decisions are generally served on Form I-39. Since the I-39 contains a notation requiring the alien to present himself to the deportation section five days prior to the expiration of the voluntary departure with his departure arrangements, no I-210 need be issued. In written decisions, a Form I-210 should be sent to the alien to notify him of the conditions of his voluntary departure.

3. Terminations. Deportation proceedings may be terminated by either the District Director or the Immigration Judge. Termination prior to the hearing is accomplished by the District Director on Form I-470; and after commencement of the actual hearing, on Form I-471. If the Immigration Judge terminates proceedings because the Service has failed to prove its case, the decision must be done by written decision, fully setting forth the facts leading to the termination. If the Immigration Judge terminates on other grounds, e.g., the alien supposedly departed the United States, it may be done on Form I-167, Memorandum of Hearing and Decision.

Chapter 8 -- Bond Breach
or Cancellation

CHAPTER 8

BOND BREACH OR CANCELLATION

SUBJECT	FORMS	REFERENCE	PARA.
Appeals and Motions	I-290B	8CFR 103.3, 103.5, 214.4(h), 299.1	
Authorized Departure Prior to Hearing	I-470	8CFR 242.7, OI 242.2	
Authority		8CFR 103.6(e), 103.6(c)3	8-2
Breach Procedure	I-323	AM 2974.11, 8CFR 299.1	
Cancellation Procedure	I-391	INA 242(c), 8CFR 103.6(e), AM 2974.02, 07, 08, 09; 8CFR 299.1	
Change of Obligor	I-312	AM 2974.02, 8CFR 103.6(a)	
Confinement by Other Agencies	I-247	INA 242(h), 242(c), 242.3(b)	8-5
Demand	I-340	8CFR 103.5(a), 242.1(b), 243.3	8-3
Docket Notations	I-154, I-156, G-361, I-601	AM 2798.01,11	
Evidence of Departure	I-94, I-392	OI 231.3	
Form	I-323		8-6
General			8-1
Loss of Receipt	I-395	AM 2974.03, 07	
Posting	I-352, I-351, I-305		8-8
Return of Collateral to Obligor Residing Abroad		AM 2974.10	
Rider, No Work	I-351		8-7
Substantial Compliance			8-4

BOND BREACH OR CANCELLATION

8 - 1 General

Reference: INA 242(a); 8 CFR 242.2; 8 CFR 103.6(a), *et seq.*; OI 103.6; OI 242.6(b)

The primary purpose of a bond in a deportation matter is to insure the alien will appear at hearing, and, if so ordered, will be available for deportation. A bond may also put conditions on an alien's enlargement. *Matter of Toscano-Rivas*, et. al. 14 INA 523.

The authority to take bonds in deportation matters, as well as the amounts of such bonds, is contained in INA 242(a). This authority is expanded, and the procedures for the review of such determinations, in 8 CFR 242.2.

An immigration bond is a contract entered into between the individual or company (obligor) and the Service, in which the obligor pledges a certain sum of money to insure compliance with the conditions of the bond. If these bond conditions are fully met, the bond is declared cancelled, and the security or moneys deposited with the Service are returned to the obligor. If these conditions are not fulfilled, the bond is declared breached and the moneys or securities are converted to the Service, or, in cases of a surety bond, the damages are liquidated.

8 - 2 Authority

Reference: 8 CFR 103.6(e), 103.6(c)3

Authority to breach is contained in 8 CFR 103.7(e). Authority to cancel a bond is set forth in 8 CFR 103.6(c)3.

8 - 3 Demand

Reference: 8 CFR 103.5(a), 8 CFR 242.1(b)

Prior to institution of breach proceedings, it is necessary that the obligor be given the opportunity to discharge his liabilities. In the case of a delivery bond this opportunity is provided in the form of a written demand. Demand must be made upon the obligor and must be timely, that is, the obligor must be provided a reasonable period to comply with the demand conditions.

8 CFR 242.1(b) provides that a respondent in a deportation hearing be notified of the time and place of hearing not less than seven days before the hearing date except where public interest, safety, or security otherwise requires.

8 CFR 243.3 requires that an alien not in the custody of the Service be given not less than 72 hours advance notice in writing of the time and place for his surrender for deportation.

8 CFR 103.5(a)(b) requires that whenever a person has a right or is required to do some act within a prescribed period after the service of a notice upon him and the notice is served by mail, 3 days shall be added to the prescribed period.

The fact that the obligor failed to receive the demand is insufficient to prevent a breach from occurring - Matter of S..., 3 INA 813.

These time periods should be adhered to when making demand upon an obligor to present an alien for any of the above purposes.

8 - 4 Substantial Compliance

Delivery bonds are exacted to insure that aliens will be produced when required by this Service for hearings or deportation. They are necessary in order that the Service may discharge its functions in an orderly manner. The courts have taken cognizance of the confusion which would result if aliens could be surrendered at any time it suited their convenience.

A bond conditioned for the delivery of an alien provides that ". . . the obligor shall cause said alien to be produced or to produce himself to an immigration officer of the United States upon each and every request of such officer until deportation proceedings in his case are finally terminated or until the said alien is actually accepted by such immigration office for detention or deportation."

The alien must be presented exactly as the demand requires. Matter of C..., 3 INA 862.

The regulations provide that there is a bond breach where there has been a substantial breach of the stipulated conditions. Technical violations do not necessarily justify a breach of bond. See Matter of Don Donaldson Key Bail Service 13 I&N Dec. 563.

Substantial performance exists where there has been no willful departure from the terms or conditions of the bond, where the conditions have been honestly and faithfully complied with and the only variance from their strict and literal performance consists of technical or unimportant occurrences. Substantial violations would be those acts which would constitute a willful departure from the terms or conditions of the bond or the failure to comply or adhere to the essential elements of those terms or conditions. See Matter of Nguyen I.D. 2344 (Reg. Conn. 1975).

Burden of proof to establish compliance rests with the obligor. See Matter of Peerless Insurance Company I.D. 2330 (Reg. Comm. 1974).

Both as a practical matter to help assure substantial compliance, as well as a legal consideration if later determining whether to breach for substantial violation, a Deportation Officer, before releasing an alien to the custody of an obligor, should explain to the obligor (and alien) just what constitutes substantial compliance and substantial violations. The Deportation Officer should read the technical language of paragraph 2, "Bond Conditioned for the Delivery of an Alien" to the obligor. He then should explain the paragraph to the obligor in clear, non-technical terms. By so doing the obligor is made aware of his responsibilities. (In many instances, intending obligors have declined to post bond when made aware of their responsibilities). Then if a substantial violation occurs, the obligor's plea of ignorance of the conditions of the delivery bond need be given little or no consideration.

8 - 5 Confinement by Other Agencies

Reference: INA 242(h), 242(c), 8 CFR 242.3(b)

An alien confined by another agency is not in the physical custody of the District Director and the District Director lacks jurisdiction to set bond conditions. See Matter of Lehder I.D. 2337 (BIA 1975).

Any outstanding bond for an alien should be cancelled upon the serving of a detainer upon the institution wherein the alien is confined.

8 - 6 Form

Reference: AM 2974.02. Form I-323 is to be used to notify the obligor that a breach has occurred. See AM 2974.11 for distribution of the I-323.

When preparing a notice of breach, the notice must contain, in simple language, the nature of the violation as specifically as possible. The obligor must also be notified of his appeal rights, and is to be provided Form I-290B for this purpose. No breach is final until the appeal has been waived, the appeal period has expired without the filing of an appeal, or the breach has been sustained upon appeal.

In some cases the obligor, upon being notified a breach has occurred, will provide information, that if obtained earlier, would have resulted in the bond being cancelled. The District Director has the discretionary authority to accept such an appeal, even if not timely filed, as a motion to reopen and reconsider. In other cases, information may be received through Service efforts that, if obtained earlier, would have resulted in the bond being cancelled. The District Director has the discretionary authority to reopen such breach proceedings on his own motion. In either instance, a memorandum order should be prepared for the District Director's signature setting forth the reasons for the reopening of the proceedings and the order of the District Director. If the bond is declared cancelled on such a motion, proceed with the cancellation procedures outlined below.

8 - 7 No Work Riders

Reference: Form I-351

Acceptance of unauthorized employment, when the bond has a "no work rider;" unlike the previously mentioned violations, this type of violations must be supported by affirmative evidence of a breach, e.g., pay stubs or a letter from an employer relating to the acceptance of employment subsequent to the posting of a "no work rider" bond, and an affirmative showing that authorization to accept such employment was not granted by the Service.

8 - 8 Posting Bonds

Reference: OI 103.6, OI 242.6(b), AM 2974.02

There are three forms most generally used in the posting of delivery bonds (those used in deportation proceedings): the I-352, which is the actual bond contract; the I-351, which contains bond riders, or additional conditions not on the Form I-352; and the I-305, the receipt for cash or U.S. Treasury bonds (not savings bonds!!!). Only the I-352 and I-351 will be discussed here, as the I-305 is discussed in depth in the cited AM's.

The I-352 is divided into six parts, or blocks:

a. A block giving identifying data about the obligor, and, if the obligor is a surety company, data about the person requesting that the bond be posted, and the amount of premium the company is charging.

b. A block giving identifying data about the alien for whom the bond is being posted.

c. A block giving the terms and conditions of the bond, as well as the manner in which demands will be made upon the obligor. Only those conditions specifically mentioned in this section are enforceable. Therefore, be sure to include all conditions and riders in the spaces provided.

d. A signature block verifying that the obligor accepts and understands the terms and conditions of the bond.

e. A power of attorney block which allows the Government use of the monies or securities placed as collateral for the bond, as well as the authority to apply any security posted to the damages incurred by a breach of the bond.

f. A block for acceptance of the bond by the District Director. All Bonds must be signed by the District Director.

The I-351 or "bond rider form" is generally used to impose the additional condition that the alien, for whom the bond was posted, not accept unauthorized employment. It should not be used to indicate the bond is a delivery bond since the latest edition of the I-352 contains the delivery bond condition on the reverse, and further, this condition is stated in such a way as to require the alien appearance on each and every demand of an immigration officer, not just for hearing or deportation, as stated on the I-351.

Generally speaking, a demand is made on the obligor concurrently with the posting of the bond. Any demands on delivery bonds must be made on Form I-340 directed to the obligor. The I-340 must notify the obligor of the date, time, and place he is to surrender the alien. It should also include the reason for which the alien is to be presented. If the obligor is present, delivery of the I-340 should be made personally, and the file so noted. Otherwise delivery of the demand, as stated on the I-352, will be made by certified mail to the obligor's last known address. Courtesy copies are to be provided to the alien, and attorney, if any.

Chapter 9 -- Travel
Documents

CHAPTER 9

TRAVEL DOCUMENTATION

SUBJECT	FORMS	REFERENCE	PARA.
Canada	I-270, I-217, I-141	See Form	9-10
Country of Residence, Documents issued by		OI 243.1(c)	9-3
Criminal, Immoral and Subversive	I-229	INA 242(e) OI	9-6
Deportation Case Check Sheet	I-170	OI 243.1(c)(1)	9-5
Designation of Country of Deportation	I-241	See Form	9-4
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Presentations	I-217, I-217A	See Forms, Travel Document Handbook	9-7

TRAVEL DOCUMENTATION

9 - 1 General

Reference: OI 101.2, Public Notice 375 (Published 38 F.R. 1224, January 10, 1973) Pages 584.3-584.5 Law Book, INA 242(c), INA 242(d), INA 242(e), OI 243.1(c)(1), OI 243.1(c)(2) and Appendix, Travel Document Handbook

The ability to obtain travel documents for detained aliens is one of the most important duties you will have as a Deportation Officer. It is incumbent upon you to expedite detained cases for a number of reasons. Section 242(c) gives the Attorney General authority to detain for six months following a final order of deportation. This same statute subjects this authority to possible review by the Federal courts in habeas corpus proceedings. Many courts have decided in favor of the alien when it is adjudged that the Service was not proceeding with reasonable dispatch. Should expulsion not be effected within six months following a final order of deportation, Section 242(d) dictates that the alien be released under an Order of Supervision. Further, each day that an alien remains in custody means detention costs, man-days at Government expense. The expeditious moving of detained aliens should take priority over all other projects in your office.

Travel documents are generally thought of as passports. In actuality, travel documents take various forms. Certificates of Identity or Nationality, Identification Cards, Seaman and Identification Books, Seaman Certificates of Identification and various forms of Provisional Passports, Salvoconductos, and Emergency Travel Documents issued by governments of various countries to their citizens and lawful residents for the purpose of travel.

This chapter on travel documentation is meant to be a guide, and is not intended to be a final authority. You should also consult your Travel Document Handbook. Your final authority is going to be the foreign consul. The consul is the person who issues the travel document to you.

9 - 2 Foreign Consular Officers

Reference: OI 243.1(c)

As you gain experience as a Deportation Officer you will realize the crucial importance of liaison with consular officers. If you should alienate your local consul it will be extremely difficult to obtain any kind of travel document when needed. It is generally accepted that foreign consular officers operate in different ways, and with different interpretations of their own operating instructions. Some foreign consular officers are stricter than others in interpretation. Foreign consular officers operate from a manual of instructions provided by their government. Often times, in their interest to do what they believe is necessary for the purpose of protecting the interests of their government, and their nationals, they impose local ground rules. These ground rules may seem unreasonable to you as a deportation officer, but you must comply.

All communications with consulate officials must be courteous in nature, without demanding overtones. However, persistent follow-up is often required to expeditiously obtain a requested travel document. The value of liaison cannot be overstated! One consul may issue upon your presentation without any actual proof of nationality or citizenship while another may want a personal interview with the alien. Still another consul, from the same country, may not consider issuance without some sort of documentary evidence to establish citizenship. Some consuls have authority to issue locally under a given set of circumstances, others are required to remand the case to their home country. Each consul is different. You should check your Travel Document Handbook about the foreign consul for specific requirements.

9 - 3 Documents Issued by the Country of Residence

Many aliens travel on documents issued by the country of residence rather than the country of citizenship. It is important that such documents be kept valid as the country concerned will generally deny a document on the basis of loss of residence after the document has expired. In cases of alien residents of Canada, revalidation should be applied for as soon as administratively possible.

9 - 4 Designation of Country of Deportation

Reference: OI 243.1(c)

If, at his hearing, an alien designates a country other than his home country to which he prefers to be deported, the deportation officer will immediately prepare Form I-241 to present to the foreign consul of the designated country. The consul will, in time, return the Form I-241 indicating whether or not the alien will be allowed to enter the designated country. If after 90 days, nothing is received from the foreign consul, you may remove the alien to his home country. Remember, if the alien is not a native and citizen of Canada or foreign contiguous territory he cannot designate those areas as a country of deportation.

An important point to remember is that if there is the slightest possibility that the alien may be accepted by the designated country, you should make a formal presentation along with the Form I-241. A simultaneous application for a travel document shall be made to the authorities of the alien's home country to which he is likely to be deported, in the event the alien is refused by the country of his designation.

9 - 5 Form I-170 Deportation Case Check Sheet

Reference: OI 243.1(c)(1)

As in all cases, the Form I-170 will be kept complete and up-to-date on the top of the administrative side of the file. The reverse side of the Form I-170 pertains to travel document acquisition. Further, always note your docket card of the action taken and make the appropriate call-up.

9 - 6 Criminal, Immoral, and Subversive

Reference: INA 242(e) and OI 242.6(b)

When an alien has a final order of deportation by reason of being a member of any of the following classes of INA Section 241(a)(4), (5), (6), (7), (11), (12), (14), (15), (16), (17), or (18), the deportation officer will immediately serve upon the alien Form I-229. Form I-229 orders the alien to obtain a travel document and travel arrangements to effect his or her deportation. Regardless of your efforts to obtain a travel document and the travel arrangements, the alien is required to comply with Form I-229.

9 - 7 "Presentations"

The formal request to a foreign consul in the United States for a travel document is commonly referred to as a "Presentation." The presentation often varies from country to country. The basic presentation should contain:

1. A cover letter to the consul with the alien's name and "A" number and setting forth whether the alien is being deported, or allowed to leave in voluntary departure status. If there is yet to be a final order it could be stated that the alien is "under deportation proceedings."
2. Two copies of Form I-217, Information for Travel Document or Passport. Further, I-217A in the case of a Chinese.
3. A copy of Form I-221, the Order to Show Cause.
4. A copy of Form I-38 or I-39, Order of the Immigration Judge.
5. A copy of Form I-205, Warrant of Deportation.
6. Three photographs (varies).
7. Any documents of identity or nationality the alien may have. It is important to remember any and all documents submitted to the consul should be copied for the file.

9 - 8 "Iron Curtain" Countries

Reference: OI 243.1(c)(1), and Travel Document Handbook

The "Iron Curtain" countries are: Union of Soviet Socialist Republics, Estonia, Latvia, Lithuania, Poland, Czechoslovakia, Hungary, Bulgaria, Romania, Albania, Cuba, People's Republic of China, North Korea, the

best copy available

Soviet Zone of Germany, Vietnam, Laos, Cambodia, and Outer Mongolia.

Applications may not be made for Albania, Estonia, Latvia, Lithuania, and generally Hungary. Applications for the other countries named are made to the appropriate embassy through the Department of State.

9 - 9 Mental Incompetent Cases

In mental incompetent cases, a presentation should be made whether or not a passport is on hand. The presentation should include a Form I-141, Medical and Clinical Summary, from the hospital in which the alien has been detained or treated. It will generally be necessary that hospitalization in the receiving country be arranged before transportation arrangements are completed.

In mental incompetent cases, most consulates desire at least ten days advance notice of transportation arrangements including the port and estimated time of arrival.

9 - 10 Canada

Reference: OI 243.1(c)(2) and Appendix

Any request for Canadian consent, to deport an alien to Canada, when required by the reciprocal arrangement of 1949, shall be submitted to the USINS Liaison Officer at Ottawa on Form I-270. Attachments will include:

1. Form I-217 in triplicate.
2. Form I-141, Medical Certificate, and any available clinical history.
3. Any documentary evidence of Canadian birth, citizenship or domicile.

For further details, please see the above referenced OI.

9 - 11 Notations on Travel Documents

Reference: OI 242.10(g)

An important point to remember is to always copy the travel document or substantiating documents for the file. If the alien is apprehended again and he is without a travel document, you will have something to present to the foreign consul for his consideration.

Chapter 10 -- Relief from Deportation

CHAPTER 10

RELIEF FROM DEPORTATION

INDEX

Subject	Forms	Reference	Para
Adjustment	I-485, I-471, G-325a, SS-5, I-134		10-1
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10 - 1 Adjustment of Status as Lawful Permanent Resident

Reference: 8 CFR 103.6(c)(2), 242.1(f); OI 242.12; 8 CFR 245.1(g), .2(a)(2), .2(d), .3, 8 CFR 246, 249.2; OI 103.1(c)(1), .6(c)(2), 105.10(b), 245.1(a), .2(b)(1), .2(c)(1), .2(d)(6), .3(b); AM 2482 Ex. 1; Immigration Inspector Handbook 10-1 to 10-20, 10-26 to 10-34, 10-59 to 10-64.

An alien eligible for adjustment of status must be inspected and admitted or paroled into the United States, must make an application, and must be statutorily eligible to receive an immigrant visa which is immediately available to him at the time of application.

Specifically, those ineligible to make an application include alien crewmen, an alien (other than 201(b)) who accepts employment prior to filing an application, or those admitted in transit without a visa. Exchange visitors subject to the two-year foreign residence requirements are ineligible unless they obtain a waiver of same.

An immigrant visa must be immediately available when the application is filed. After the 1976 amendment, an immigrant visa is available if the priority date has been reached on the State Department Visa Office Bulletin.

If an alien meets all of the above requirements, the application is not automatically granted. The alien applicant has to show that the application deserves favorable action. It is not unusual to deny an application unless some favorable factors are presented to this Service. When adverse and favorable factors are presented, the adjustment is purely an exercise of administrative discretion. Of importance, and considered as a factor in the exercise of discretion is the establishment of good moral character for a reasonable period of time.

The priority date of a preference immigrant is the date of the filing of the approved visa petition. Should the application for adjustment of status be denied, the approved petition would be forwarded to an American Consulate with the appropriate priority date. If the application is denied by the District Director, there is no administrative appeal, however, the applicant may renew his request for adjustment in deportation proceedings before the Immigration Judge. In the deportation hearings, the Immigration Judge is not bound by any previous decision of the District Director. Also, an alien who was granted advance parole may renew his denied application in exclusion proceedings. The decision of the Immigration Judge who will approve or deny any application for permanent residence before him is subject to appeal to the Board of Immigration Appeals.

As espoused earlier, the burden of proof rests with the alien. Failure to answer questions or supply relevant information will result in denial as failure to sustain the burden of proof.

After the grant of adjustment of status, rescission or revocation is authorized within a five year period. Ineligibility must be shown by clear, unequivocal, and convincing evidence in order to sustain the rescission proceeding. The Immigration Judge has the authority to either terminate proceedings if the Government has not shown the alien ineligible, or orders that the adjustment of status be rescinded. If the latter occurs, Forms I-151 or I-551 must be surrendered to this Service.

10 - 2 Contreras v. Bell

Reference: Memorandums, CO 800-C (dated 1/25/80), 242.2-P, 243.2-P

A permanent injunction and final judgment order was issued February 27, 1980. Essentially, it provides for the following:

1. A specifically named Mexican second preference immigrant visa applicant who entered the country prior to December 14, 1979, and has a priority date earlier than April 1, 1978, and any Mexican nonpreference immigrant visa applicant who entered the country prior to December 14, 1979, and has a priority date earlier than July 1, 1976, shall be permitted by United States Immigration and Naturalization Service to remain in the United States.
2. Any alien contacted by the United States Immigration and Naturalization Service who is a native of Mexico

shall be informed by this Service in writing of his rights under this Order.

3. The United States Immigration and Naturalization Service may begin, continue, and conclude efforts to expel an alien otherwise covered by this Order if the Regional Commissioner (or Acting) concludes that the alien's continued presence in the United States would be contrary to the national interest. If after due consideration of possible waivers of grounds of excludability and of permission to reapply for admission it appears that an alien is not eligible for an immigrant visa, that official shall set forth in writing all reasons for his decision and shall give the alien seven-days notice before the Immigration and Naturalization Service proceeds with efforts towards expulsion. If the alien is ineligible on grounds other than those mentioned above, the District Director (Acting or Deputy) shall set forth his reasons, and efforts to expel will continue.

4. A deportation hearing may be held in any case where the alien seeks relief under either Section 244(a) or Section 245 of the Immigration and Nationality Act or any other form of relief from deportation.

5. An alien protected under this order shall be issued Form I-640. Form I-94 will be stamped "Contreras vs. Bell: Indefinite Authorization to Remain, Employment Authorized." The file copy of the I-640 is noted "employment authorized" nunc pro tunc to the date of the last entry. Form I-640 is deemed cancelled if the alien leaves the United States or adjusts.

6. Each district must report the following information under Section 8 of the monthly CDD-34:

   a. Monthly and cumulative number of cases adjusted under Section 245 who received a second preference number through this program.

   b. Monthly and cumulative number of I-640's issued.

   c. Monthly and cumulative number of I-640's voided.

   d. Monthly and cumulative number of aliens protected.

   e. Monthly and cumulative number of cases deemed ineligible.

7. Form I-210 should not be used. If eligibility is doubtful, call in to office for G-56 interview.

10 - 3 Discretionary Action

One should always keep in mind that relief from deportation is usually at the discretion of the Attorney General which may or may not be granted. The alien, in effect, has no right to demand a favorable discretionary action, however, the exercising of this power must be within reason. Whenever a decision involving a denial of discretionary action is made, the grounds for such denial must be given. Failure to do so could result in judicial review premised on an abuse of discretion. (See Jarecha v. INS, 417 F. 2nd 220 (5th Cir. 1979). As noted above, this power may be challenged if one proves that the Attorney General has acted unlawfully or if it is proven that he has abused his discretion. In providing relief from deportation, the Attorney General delegates his authority through subordinates such as the District Director and the Immigration Judge.

Furthermore, consideration should be given first as to whether or not the alien is eligible under the statutes and/or regulations, and then the exercise of discretion should be considered. However, if the situation does come up where the grant of discretion will be denied, we may assume eligibility and deny as a matter of discretion. In other words, if "Part B" is deniable, we do not have to make a determination in regards to "Part A."

The burden of proof is placed directly on the shoulders of an applicant for the grant of discretionary relief. If an alien refuses to answer questions under the 5th Amendment and has applied for discretionary relief, it may be refused as not having met the burden of proof of eligibility for relief. A denial of discretionary relief is reviewable and may be further challenged in the judiciary usually based on a charge of an abuse of discretion.

10 - 4 General

Reference: 8 CFR 242.17(c)(d)

An alien involved in the expulsion process is entitled to due process which includes a fair hearing and the right to appeal. In deserving cases, various avenues of relief were established to avoid deportation where extreme hardship was evident. (See Foti vs. INS, 375 U.S. 217, 84 S.Ct. 306, 11 L. Ed. 2nd 281 (1963)). Because of the existence of hardships on aliens and their immediate families, the Service withholds, in deserving cases, deportation for humanitarian reasons.

10 - 5 Procedures by Aliens in the United States to Obtain Immigrant Visa

Reference: OI 212.5(c); 8 CFR 212.5(b), 235.12(a)(c)(f), 245.2(d)(4), .6(c), 22 CFR 42.62, 22 CFR 42.110, Appendix to 22 CFR 42.91(a)(15)(iii)

Certain aliens, specifically those who entered without inspection, crewmen, and those who accepted unauthorized employment, are refused adjustment of status in the United States. Therefore, they must leave the United States and apply for an immigrant visa at an American Consul which will accept their application. A general rule is that the application should be filed at an American Consulate in the alien's native country, or country of last residence. A stateside criteria processing has now been initiated by the American Consulates (see FAM 22 CFR 42.110). The following conditions must be satisfied to qualify for this processing:

a. Statutorily ineligible for adjustment, (crewmen, in transit without visa, worked without permission, entry without inspection).

b. The United States Immigration and Naturalization Service has allowed the alien to remain in the United States pending processing of his immigrant visa application. Failure to obtain this permission will result in the alien being ineligible for this type of processing. Also, he must be the beneficiary of an approved petition according him immediate, first or second preference. Stateside processing is generally denied to all others. Consequently, when the visa petition is sent to the American Consulate in the alien's home country, this application for an immigrant visa will generally allow an alien to remain in the United States pending a visa appointment date via a letter of invitation. It is incumbent upon the alien to present this letter of invitation and a valid passport (or valid travel document) for entry into Canada. If an immigrant visa is not issued by the American Consulate, the alien is permitted to return to the United States and resume his former status. Some instances will vary, specifically, when refugees do not receive their immigrant visas, they may be paroled back into the United States. It is, however, unlikely that an alien who has received a letter of invitation will be unsuccessful in obtaining an immigrant visa in order to re-enter the United States.

There are six American Consulates in Canada which will process the above-mentioned cases. They are as follows:

Address of Post	Jurisdiction
U. S. Consulate General, Calgary	Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah and Wyoming
U. S. Consulate General, Montreal	Long Island, New York City and Westchester County
U. S. Consulate General, Toronto	Alabama, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Maryland, Michigan, Mississippi, New Jersey, New York (except New York City, Long Island and Westchester County), North Carolina, Ohio, Pennsylvania, Puerto Rico, South Carolina, Tennessee, Virginia, Washington, D.C. and West Virginia
U. S. Consulate General, Halifax	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont
U. S. Consulate General, Vancouver	Alaska, California, Hawaii, Oregon and Washington
U. S. Consulate General, Winnipeg	Arkansas, Iowa, Kansas, Louisiana, Minnesota, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota, Texas and Wisconsin

10 - 6 Permission to Remain Temporarily

Reference: I-538 - 8 CFR 214.2(f), (5), (6); OI 214.2(f), 235.4(h); Immigration Inspectors' Handbook 9-7, 8, 9-18 to 9-22; I-539 - 8 CFR 214.1(c), .2(e), .2(h)(1), .2(h)(11), OI 103.2(o), 214.2(a)(e)(g)(h), 235.4(H); I-129B - 8 CFR 214.2(h)(1), (3a), (4)(i), 214.2(L)(1)(4), 248.3(b), .4, 282.1, OI 214.2(h)(1), .2(h)(2)(i), (ii), .2(h)(2)(v); I-506 - 8 CFR 214.2(j)(2), 248.3(a)(b), OI 248.1(b), (c), (d), .2, .5; Immigration Inspectors' Handbook 10-51 to 10-58.2; Section 248; Generally, OI 242.10(e)(2), .10(h); 8 CFR 244.2

Extensions of temporary stay for those aliens admitted as nonimmigrants may be authorized by the District Director. The alien must show compliance with previous conditions and may have to post a maintenance of status bond. Form I-539 is an application for extension of temporary stay and must be submitted to the District Director. There is no appeal to his decision. Form I-538 is used by all students to request additional time. Form ISP-66 is used by Exchange Visitors for the same purpose.

In some instances, requiring an alien to depart and return with a different nonimmigrant visa would be a waste of time. Consequently, a change from one nonimmigrant status to another may be authorized. Basically, there are two criteria. One, the alien must be maintaining his nonimmigrant status; and, two, the alien must be eligible. Crewmen and fiancees are ineligible, while transits and exchange visitors are eligible to change to diplomatic status or principal resident representative (A's or G's) only. Applications are submitted on Form I-506 with a $10 fee and Form I-94. Form I-129B has to accompany any request for change to a temporary worker, trainee, or intra-company transferee. Form I-94, upon approval, is endorsed and a time limit is set. If the alien leaves the United States, a new visa would be required upon reentry.

Denial of a request for change is appealable to the Regional Commissioner. If no appeal is filed, the alien is generally placed under docket control and granted 30 days to depart. These applications are solely within the jurisdiction of the District Director.

10 - 7 Registry of Lawful Entry of Aliens

Reference: Section 249, 8 CFR 249.2; Immigration Inspectors' Handbook 10-35 to 10.44.1

In order to qualify, an alien must satisfy the following requirements:

a. Have entered the United States Prior to June 30, 1948,

b. have continuous United States residence since entry,

c. have established good moral character,

d. is not ineligible for citizenship.

10 - 8 Waivers of Deportability

Reference: OI 103.1(a)(ii), .3, .7(c), 108, 212.1, .7(a), 214.2(f), 235.12, 235.1(a), 251.1(b), (c), 249.1(d), 3.1(b)(d); 8 CFR 103.1(e)(f)(g), 108, 211.1, 212.2 and .3, .1(f), 217.7(a)(b)(1), 234.2(c)(1), 242.7a, 242.5a, 241.1; Section 211(b), 108, 212(a)(15)(16)(17), 212(h), 241(b); Immigration Inspectors' Handbook 6-1 to 6-12, 6-12 to 6-22, 6-22.1, 6-47 to 6-53

An immigrant who is required to present an immigrant visa may receive a waiver of the visa requirements only if he is otherwise admissible, was legally admitted for permanent residence and is returning to the United States from a temporary visit abroad. Form I-193 with a $5.00 fee is the application necessary for the above-mentioned waiver. It is the responsibility of the District Director to adjudicate such form at the port of entry, however, this is normally done by the immigrant inspector at the time of entry. After entry, the I-193 can be submitted and granted by an Immigration Judge.

An immigrant (lawful permanent resident) who appears to be excludable and is returning to a lawful unrelinquished domicile of seven consecutive years is eligible for waiver under Section 212(c) of the Act of 1952 which provides a restrictive relief from deportation. (See Immigration and Nationality Act 212(c)). Prior to 1976, Section 212(c) was interpreted as a waiver of inadmissibility and not deportability. This waiver had been recognized as applicable to all grounds of exclusion, except subversives. However, administrative and judicial decisions have encompassed a waiver of deportability which applies to aliens who have never left the United States.

To qualify for Section 212(c) certain pre-requisites must be met:

a. Must be a legal permanent resident alien.

b. Temporary absence abroad or continued residence in the United States.

An item of particular interest is that there is no requirement that the return be regarded as an entry for deportation purposes. Also, since 1976, in the matter of Francis v. INS, 532 F. 2nd 268 (2nd Cir. 1976), applied the waiver to aliens who had never left the United States. That decision has been adopted administratively. However, in Lok v. INS, 548 F. 2nd 37 (2nd Cir. 1977), which is a more liberal view of 212(c), has not been adopted outside of that Circuit.

c. Departed voluntarily and not under an order of deportation.

d. Returning to or continuing an unrelinquished domicile of seven consecutive years. An exception to this rule has been adopted by the Second Circuit whereby the seven-year period could consist of any residence in the United States whether legal or not. Also, actual physical presence during the seven-year period is not required. Temporary absences may be allowed as long as the alien maintains a "domicile."

As stated above, the Attorney General has the statutory power to waive every ground of inadmissibility, at his discretion, except subversives. This discretion involves, but is not limited to, proof of good moral character and any hardship to the alien and/or his family. Adverse factors include the type of offense, previous violations, and evidence of bad character. Rehabilitation in relation to the offense committed is also a factor which has to be considered. Generally, each case with its favorable and unfavorable factors is to be considered, and a final decision is made through the exercise of discretion. (See matter of Marin 16 I.N. (I.D. 2666, 1978)).

This waiver must be submitted on application Form I-191 with a $50.00 fee. In deportation proceedings, the Immigration Judge adjudicates the application which can be appealed to the Board of Immigration Appeals. If no expulsion proceedings are pending, the District Director considers the waiver. If the alien applies for such waiver while abroad, it should be forwarded to the District Director who has jurisdiction over the intended place of residence. This is appealable, if denied, to the Board.

In conclusion, waivers on Forms I-191 and I-193 are very similar except for one major difference. Form I-193 (Waiver of Visa) can be adjudicated only if the applicant is otherwise admissible. Form I-191 executed under Section 212(c) waives virtually all grounds of inadmissibility as long as the alien has had seven years as a legal permanent resident.

A waiver of excludability (inadmissibility) is also available to those aliens who are relatives of American citizens and resident aliens. This waiver is applicable to those aliens who are excluded on criminal and immoral grounds. However, the alien must establish that his expulsion would result in extreme hardship to the American citizen or legal permanent resident and that his admission would not be detrimental to the national interest. Factors to be acknowledged when considering this application for waiver include good moral character, rehabilitation, and stability of marriage. It should be noted that a grant of this waiver is based upon hardship to the relatives and not to himself.

The Attorney General may also waive excludability based on fraud and misrepresentation in seeking entry into the United States as long as the alien is the spouse, parent, or child of an American citizen or legal permanent resident. Furthermore, this waiver can only be granted to aliens who are otherwise admissible apart from the commission of a crime or misrepresentation.

The alien applies for a waiver of excludability on Form I-601 with a $40.00 fee. If the alien is applying for such waiver while outside the United States, it is filed with an American Consulate who forwards it to a Service Office. The Service will then conduct an investigation and adjudicate the waiver. If denied, it may be appealed within 15 days to the Regional Commissioner or the appropriate District Director if outside the United States. More importantly, an alien under deportation proceedings, may apply for such waiver in adjustment of status or registry proceedings. If the proceedings were initiated on a defective entry, a waiver may be granted nunc pro tunc if such relationship was existent at the time of the defective entry.

Another waiver of deportability involves a pardon or judicial recommendation against deportation on the basis of conviction for crimes involving moral turpitude. A pardon may be granted by the President or Governor. The pardon must be full and unconditional and must be granted by the President or Governor. A stay of deportation will not ordinarily be granted to an alien to enable him to apply for a pardon. However, the Attorney General may grant such a stay as a matter of discretion.

A judicial recommendation against deportation may be made to the Attorney General that such alien not be deported based upon a crime involving moral turpitude. (Please note that pardons and judicial recommendations are valid only in cases and convictions involving moral turpitude.) The following should be emphasized:

1. The Court's recommendation must be made at the time of original sentencing or within 30 days,

2. the Court's recommendation overrides any act of discretion on the part of the Attorney General, and;

3. the Court must give this Service time to effectively represent our views prior to any recommendations on their part.

Again, pardons and judicial recommendations are restricted to crimes involving moral turpitude.

Another waiver of deportability involves permission to reapply for admission after an alien has been previously deported, excluded (within one year) or removed. Permission to reapply is also needed when aliens have been removed due to indigence, alien enemy, or voluntary departure under safeguards at Government expense.

The Immigration Judge or the Board of Immigration Appeals may grant permission to reapply if the effect of disposing of the case before them is achieved. They are ineligible to do so when the alien is ineligible for adjustment of status and will have to go abroad to apply for an immigrant visa.

Permission to reapply is applicable to an alien crewman deported because his landing permit was revoked, and to an alien who left voluntarily while a final order of deportation was outstanding.

Permission to reapply is at the discretion of the Attorney General. It can be presented before a higher court only if the decision can be construed as arbitrary. An alien must show, however, that he is otherwise admissible. Good moral character has to be shown as a favorable factor. Also, the alien may want to pay or repay his deportation costs which is viewed as a favorable factor.

The above-mentioned application is submitted on Form I-212 to the District Director who had jurisdiction over the previous proceedings or to an American Consulate abroad who in turn will transmit to the appropriate Service office.

If the District Director has denied permission to reapply, it may be appealed to the Regional Commissioner within 15 days. The application can also be considered by the Immigration Judge or Board of Immigration Appeals if the particular case before them can be disposed.

Under appropriate circumstances, a discretionary nunc pro tunc grant of permission may be granted for the last entry if the facts of the case dictate such action.

Chapter 11 -- Suspension of Deportation

CHAPTER 11

SUSPENSION OF DEPORTATION

INDEX

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SUSPENSION

11 - 1 General

Reference: INA 244, 8 CFR 244, OI 244

Suspension of deportation is a discretionary benefit for which application is made during the course of a deportation hearing. Unlike any other form of relief, suspension of deportation adjusts an alien's status from that of a deportable alien to that of one lawfully admitted for permanent residence and it is permanent in effect.

Upon receipt of the application (Form I-256A), the Immigration Judge must make a determination as to eligibility based upon evidence before him. The burden is entirely upon the alien to establish eligibility through testimony, documentation, or any other means available to him.

Normally, the Immigration Judge will then continue the hearing for the purpose of requesting an investigation. The Investigations Branch conducts interviews with the alien's employers and neighbors to determine the actual physical presence of the alien in the United States, his good moral character and if there indeed would be a hardship imposed if the alien was removed. Record checks are performed with all levels of law enforcement agencies. The comprehensive investigative report is then submitted to the Immigration Judge for his determination.

Should the Immigration Judge grant the application for suspension, a review of the Service file is made to determine if a Private Bill has ever been introduced in behalf of the alien and noting the bill number if applicable. The case is then submitted to the Congressional and Public Liaison Unit at Central Office for submission to Congress on the first calendar day of the month.

At this point the Service awaits Congressional reaction. Precisely what constitutes favorable or unfavorable action by Congress is discussed elsewhere in this chapter. It should be noted, however, that ultimately whether or not suspension of deportation is granted and lawful permanent residence is accorded depends upon the reaction by Congress.

Unfavorable action by Congress prompts consideration for deferred action status and, if inappropriate, expulsion proceedings are resumed.

Favorable action by Congress dictates that the case be referred to the Travel Control Branch for a visa charge and creation of a record of lawful admission (Form I-181).

11 - 2 Eligibility

Reference: INA 241, INA 244, INA 101(f), 538 F.2d 91 (5th Circuit 1976), Matter of Wong 12 IN 271 (1967), Matter of Barragan 13 IN 759 (1971), Rosenburg vs Fleuti, 374 U.S., Wadman vs INS, 329 F.2d 812 (9th Circuit 1964), INA 101(a)(15)(J).

In order to be eligible for suspension of deportation, an alien must be deportable under any law of the Immigration and Nationality Act except as provided in INA 244(f). In addition, the alien must meet the criteria set forth in subsection (1) or (2) of Section 244(a) of the Act.

The applicable subsection is determined by the actual deportation charge. Generally speaking, the alien deportable under the more serious offenses must qualify under Section 244(a)(2). This would mean that the alien deportable under the less serious offenses must qualify under Section 244(a)(1). However, there's an important exception: an alien, prior to entry, who was a member of the criminal, immoral or subversive classes must qualify under subsection 244(a)(1).

The qualifying requirements in the two subsections are basically the same. Both subsections require good moral character, physical presence in the United States and, in the event of deportation, imposition of hardship upon the alien himself or to his spouse, parent or minor unmarried child who is a United States citizen or a permanent resident alien.

The difference in the two subsections lies in the stringency of the requirements. Subsection 244(a)(1) requires seven years of continuous physical presence in the United States and seven years of good moral character, both of which must have been immediately preceeding the filing of the application. In addition, the hardship imposed must be considered extreme.

Subsection 244(a)(2) requires ten years of continuous physical presence in the United States immediately preceeding the filing of the application and at least ten years having elapsed since the alien became deportable. The applicant should have had good moral character for the ten years immediately preceeding the filing of the application and having had at least ten years elapse since becoming deportable. In this subsection, hardship imposed must be exceptional and extremely unusual.

The continuous physical presence requirements as specified in Sections 244(a)(1) and 244(a)(2) are exempted certain aliens who served actively in the Armed Forces of the United States as is articulated in Section 244 (b) of the Act. The period of service must have been for a minimum of twenty-four months and under honorable conditions at all times. Additionally, induction or enlistment must have occurred in the United States.

The question of whether a break in continuous physical presence occurs when the alien takes a sojurn outside of the United States has been addressed by numerous courts. It has been found that a departure during the required statutory period does not always break "continous physical presence". The criteria used to determine if a break in continuous physical presence has occurred is lengthy and complicated. The question becomes one of: "Was the departure made with intent to be meaningfully interruptive?"

Determing the existence of "hardship" to the degree specified is probably the most difficult. As previously stated, the degrees of hardship required by the two sections differ considerably. Among the factors to be considered are:

1. Family ties of the alien.
2. The actual length of residence of the alien in the United States.
3. The alien's age.
4. The alien's health.
5. The availability of a visa abroad.

The good moral character of the alien is more easily ascertained as the definition contained in Section 101(f) is relatively complete and explicit. In this regard, an alien either qualifies or he does not. An investigative report is most helpful in determining the actual moral conduct of the applicant during the specified qualification period.

Although an alien may be deportable, of good moral character and have adequate continuous physical presence and hardship, he may still be ineligible for suspension of deportation. Section 244(f) disqualifies certain classes of aliens. Among those ineligible are crewmen who effected entry after June 30, 1964. Also disqualified is an alien who was admitted as an exchange visitor (or who acquired such status after admission) and who is subject to the foreign residence requirement.

11 - 3 Referral to Congress

Reference: OI 244.1

Upon the issuance of an order by the Immigration Judge or the Board of Immigration Appeals granting suspension of deportation, the Service file must be reviewed to determine whether the alien has ever been the beneficiary of a Private Bill. This information should be included in the cover sheet memorandum accompanying the order. If a bill has ever been introduced, the bill number and applicable session of congress should be included.

11 - 4 Congressional Action

Reference: INA 244(c)

Congress receives the decision of the Immigration Judge or the Board of Immigration Appeals from the Central Office Congressional Liaison Unit in "Reports to Congress." This is submitted on the first day of the month if Congress is in session. If not in session, Congress receives it at the beginning of the next session.

A case must remain in Congress for the remainder of the session in which it is introduced and the entire following session. If, during this period, Congress fails to act upon a Section 244(a)(1) case, it is considered approved. Failure to act on a Section 244(a)(2) case during the specified period constitutes disapproval.

To be considered approved, a Section 244(a)(2) case requires a favorable resolution by both houses. Any case is considered disapproved if either house passes an unfavorable resolution.

During the period that a case is pending in Congress, the alien or his representative may submit evidence or argument to Congress in an attempt to prompt favorable action.

After a case has been before Congress the required period, the Congressional Liaison Unit notifies the appropriate field offices of the favorable or unfavorable action. The field office would then take appropriate action. This, of course, would be expulsion if the action was unfavorable and adjustment of status of the alien in the event of favorable action.

11 - 5 Treatment of the Docket

A case involving an application for suspension of deportation requires no special treatment within the docket until the Immigration Judge or the Board of Immigration Appeals has granted the application. An entry is then made on the docket card (Form I-154) in the "Suspension" block indicating the appropriate subsection under which the application is made. Two copies of the order with an accompanying cover memo are sent to the Congressional Liaison Unit at Central Office. When the Congressional Liaison Unit has submitted the case to Congress, the appropriate field office is notified. This information is then entered in the "Date to Congress" block on the docket card and it is placed in Category 4. The call-up date is amended to February first of the next odd-numbered year after referral to Congress. By this date, the field office should have received notification of favorable or unfavorable Congressional action. Congressional action is entered in block labeled "Congressional Disposition" and appropriate Service action is taken.

Chapter 12 -- Crewmen

CHAPTER 12

CREWMEN

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CREWMEN

12 - 1 Deportation Case Check Sheet

A Form I-170 shall be kept on top of the right-hand side of the file of each alien against whom expulsion proceedings are initiated, including proceedings under Section 252(b). This form provides a summary reference of actions taken and a guide for consideration of future actions. It is set up in accordance with the usual processing of cases. The responsible employee shall enter the date as each action listed thereon is taken and initial the appropriate column. Items determined by the responsible officer to be inapplicable will be endorsed "not required" and initialed.

When determination is made that a travel document is unobtainable the reverse of the Form I-170, "Record of Measures Taken to Obtain Travel Document for Deportation" shall be completed and kept on top of the right-hand side of the file as long as the case is inactive. The docket card should be placed in Category 6. If the case later becomes active, the Form I-170 should then be placed face up.

12 - 2 Fingerprinting

Chapter 22-19, par. 3, of the Investigator's Handbook requires that a deserting crewman who is a willful violator be fingerprinted. When time permits, a crewman whose landing permit has been revoked and who is being deported under Section 252(b) should be fingerprinted. All of the required information should be typed on the fingerprint card, Form FD-249, except the final disposition. The prints shall be fastened in the file and the file forwarded to the appropriate deportation docket control office.

Form R-84 shall be furnished to the FBI by the docket clerk upon receipt of the verification of deportation. Form R-84 need not be prepared in a case where the final disposition is shown on the fingerprint chart at the time it is forwarded to the FBI.

12 - 3 Joining a Ship for Deportation

When an alien crewman is being moved to another port for the purpose of joining a ship for deportation, a memorandum should be attached to the transfer sheet (Form I-216) giving the name and address of the shipping company, the name of the agent with whom the arrangements were made, and the office and home telephone number of the agent. This will avoid difficulties encountered when the captain of the ship on which the alien is to be deported has not been informed of the arrangements and is reluctant to take the alien on board for deportation.

12 - 4 Liability

If alien is a crewman, and deportation proceedings are instituted within five years after the granting of the last conditional permit to land temporarily, the cost of removal to the port of deportation will be at the expense of the Service and the deportation from such port will be at the expense of the owner or owners of the vessels or aircraft by which the alien came to the United States.

If deportation proceedings are instituted later than five years after entry of an alien, or five years after the granting of the last conditional permit to land temporarily in the case of a crewman, the cost of such deportation shall be at the expense of the Service.

12 - 5 Over 29 Day Vessels

Reference: OI 252.3

When a voluntary departure date is set for D-1 crewmen aboard a vessel which will remain in the United States for more than 29 days, Form I-253 shall be prepared, a list of the crewmen attached, and the crewmen's Forms I-95A noted to show the time granted returned to them. In addition, a copy of Form I-253 and list of the crewmen shall be forwarded to the arrival port for attachment to the arrival manifest. Controls shall be maintained to insure the crewmen's timely departure. These crewmen shall not be deemed to have been granted voluntary departure for deportation docket control, statistical punch cards, and nonimmigrant document control purposes; no other record keeping is required, except that all such cases shall be included in the G-23 operations report, e.g., deportable aliens found (G-23.18) and voluntary departure (23.21).

12 - 6 Passport Notations

Reference: AM 2702.2

Note file number in passport whenever an alien's passport is available. Place the "A" number, the date, place and violation on the inside back cover of the passport.

12 - 7 Record of Expenses Billable to Transportation Company

As soon as it is determined that an alien is deportable at transportation company expense, Form I-380 shall be prepared and kept under the original of the Warrant of Deportation. Items of expense will be entered as they accrue, and if the alien is transferred, the form shall accompany the Warrant of Deportation. All offices incurring billable expenses will enter them on the form, which will be promptly returned to the originating office with the executed Warrant of Deportation, and used as the basis for preparation of the bill. Items of expense must be initialed by Service employee as entered.

Form I-380 should be made out in the case of a D-1 revoked crewman as well as crewmen under outstanding orders of deportation. It is considered that a Form I-259 serves as a Warrant of Deportation in a D-1 revoked or parole revoked crewman case, and in such cases, Form I-380 should be used in the same manner as it would be if the alien were under a Warrant of Deportation.

In order to insure that responsible carriers are always billed for deportation expenses, the following procedures shall be carried out in all cases where an alien is deportable at carrier expense:

1. Form I-380 must be prepared in duplicate and all billable expenses entered thereon as they occur.

2. In cases where the agent furnishes the transportation and a GTR is not issued, the information as to who furnished the transportation shall be plainly printed in Item 12 on the I-380.

3. Upon the deportation of the alien, a bill (Form G-251) shall be immediately prepared. The thermofax copy of the bill shall be retained in the files and the original of the bill forwarded to the responsible steamship agent with all other copies forwarded to the Regional Office.

4. Copy of the completely executed Form I-380 shall be attached to the copies of the bill forwarded to the Regional Office. Any expenses incurred that are not billable to the transportation company should be omitted from Form I-380.

5. Travel vouchers submitted to the Regional Office listing the GTR's issued for the deportation of aliens shall show the alien's name, file number, and bill number.

12 - 8 Revocations

Reference: OI 252

Form I-154 showing only the crewman's name, file number, if any, and the notation "Revoked-Section 252(b)" shall be prepared by the officer revoking the permit and routed to the appropriate deportation docket control office.

12 - 9 Revocations - Category

Crewmen whose landing permit has been revoked in accordance with Section 252(b) are placed in Category 3(c).

12 - 10 Revocations - Clearing Docket

The date and place of deportation shall be placed on the Form I-95A which shall then be routed to the appropriate docket control office for posting on Form I-154, preparation of Forms G-143 and G-174 and forwarding to the Central Office. Before forwarding to the Central Office, the Form I-95A shall be stamped "Docket Cleared."

12 - 11 Summary

Handling of crewmen custody cases:

1. Prior to hearing.
    - a. Check travel document for validity.
    - b. Prepare and send Form I-284 (certified).
2. After final order of deportation.
    - a. Deportation Officer notifies shipping company to advise of deportation order.
    - b. Prepare and send Form I-288 (Certified).
    - c. Prepare Form I-205, Warrant of Deportation; I-294, Notice of Deportation; I-130, Record of Expenses Billable to Transportation Company; and if necessary, I-287, Special Care and Attention of Alien.
3. Closing of crewmen custody cases.

    After Form I-380 and Form I-205 have been returned to the Service, prepare:

    - a. G-143, Lookout.
    - b. Complete I-380.
    - c. G-251, Billing Services Rendered by the Government.
    - d. Send G-251 to Transportation Company.
4. Review authorities to assess carrier for removal expenses of alien ordered dcported.
5. Extent of carrier liability.
6. Forms utilized to notify carrier of its liability and specific bills or notice of assessment of charges.

Chapter 13 -- Warrant of Deportation and Demands

CHAPTER 13

WARRANTS AND DEMANDS

INDEX

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Authority		8 CFR 243.2 OI 243.1	13-1
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Demands	I-166, I-340	8 CFR 243.3 OI 243.2(f)	13-5
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WARRANTS AND DEMANDS

13 - 1 Warrants and Demands - General

Reference: 8 CFR 243.2, OI 243.1

A warrant of deportation is the authorization to any immigration officer to arrest and immediately deport a specifically named alien. Implicit in the authority to deport, are the authorities to arrest and detain for deportation.

13 - 2 Issuance of a Warrant of Deportation

Reference: as above.

A warrant of deportation may only be issued by a District Director, and then only after there has been a final order of deportation entered against the alien by the Immigration Judge (See Chapter 18, Appeals and Motions). If the alien has been granted voluntary departure by the Immigration Judge, or such a grant has been extended by the District Director, no warrant of deportation can be issued until the voluntary departure expires. In extremely unusual cases, voluntary departure may be revoked by the official who granted it, in writing, and a warrant of deportation issued.

Warrants of deportation are generally issued on Form I-205. In some cases, especially in Service Processing Centers, the OSC may be counter-stamped, with an approved legend, and it will then act as a warrant of deportation.

Concurrent to the warrant, a Form I-294 should be executed. Basically the I-294 informs the alien he has been ordered deported and the penalties for re-entry after deportation. The I-294 should be completed in duplicate, and the copy, counter-signed by the alien, should remain in the file. Once again, in some areas, a stamp on the OSC is used instead of the I-294.

13 - 3 Warrants and Demands - Demands

Reference: 8 CFR 243.3, OI 243.2(f)

The term "demand" is somewhat confusing as there are two types of demands issued by the Service. One is the demand made against a delivery bond on Form I-340 (see Chapter 8, Bond Breach and Cancellation). The other type of demand is the demand made on an alien to surrender himself for deportation, generally made on Form I-166. The matter is further confused by the fact that in many cases both an I-340 and I-166 are issued. Remember, the I-340 is a demand on the obligor of a bond, and is addressed to him, while the I-166 is a demand on the alien, and is therefore addressed to the alien.

All demands for surrender must contain the exact time, date, and place the alien is to surrender. They must also notify the alien of the amount of luggage he will be allowed to bring with him, without incurring additional charges from the transportation company. When possible, the alien should be informed of the exact travel arrangements. All this information is provided for on Form I-166.

A demand for surrender must be made by personal service as defined in 8 CFR 103.5a. In practicality this means the alien, and attorney (if a G-28 is on file), if any, is notified by certified mail, return receipt requested.

13 - 4 Warrants - Validity

Reference: 8 CFR 243.2, OI 243.1, INA 242(d)

Once a warrant of deportation is properly issued, it remains in effect until the alien is deported, either by his own action or the action of the Service; the final order of deportation is vacated; or the warrant is cancelled. While the Service can only detain for a six-month period immediately following the date of the final order of deportation, a warrant of deportation may be used to arrest and detain an alien for immediate deportation at any time. In the Matter of K--, 4 INA 338, the Board of Immigration Appeals held that even a ten-year delay in detaining an alien for immediate deportation did not invalidate a warrant of deportation. The key here is deportation must be imminent.

The validity of a warrant of deportation is directly dependent on the validity of the final order of deportation. Therefore, if the deportation hearing has been reopened by the Immigration Judge, the order and the warrant are no longer valid. Conversely, the warrant is valid until the hearing is actually reopened. The trial attorney will indicate on Form G-29 whether the motion is opposed or not (see Chapter 18 for a fuller discussion). Remember, the simple filing of a motion to reopen does not stay deportation, nor does it invalidate the warrant of deportation.

13 - 5 Demands - Detention

Reference: INA 242(d)

After the expiration of the statutory six-month period, an alien may be required to surrender to the Service only if deportation is imminent. Deportation is imminent only if all arrangements for deportation have been made. This includes obtaining travel documents, if necessary.

There are two instances when a demand for deportation can be made if the Service is not in possession of a travel document: (1) if the alien has indicated he has a document valid for his return to his home country; (2) the alien's consular officer has indicated he will only issue a travel document after a personal presentation of the alien. In either instance, the file must be noted in writing so that, if the alien takes recourse to habeus corpus proceedings, the Service will be able to show its actions were justified.

13 - 6 Warrants - Execution

Reference: Detention Officer's Handbook XV-9, 8 CFR 243.5, OI 243.1(b)

The execution of warrants in detained cases is thoroughly covered in the cited references.

In cases of self-deportation, the warrant of deportation, I-205, edition (10-19-77), now has spaces for the execution of the warrant upon verification of departure by other than Service officers. This information must be as complete as possible.

13 - 7 Warrants - Cancellation

Reference: OI 243.1(a)

The cited reference gives a specific instance when the warrant of deportation may be cancelled by the District Director. The District Director has the inherent discretionary authority to cancel any warrant of deportation, and reinstate voluntary departure or terminate proceedings, for good cause shown.

In cancelling a warrant of deportation, a memorandum of fact, coupled with an order directing the cancellation of the warrant should be prepared for the District Director's signature. Once the memorandum has been signed, the warrant should have the work "Cancelled" stamped across its face, and left in the file.

In cases where the final order of deportation has been vacated by the Immigration Judge, no action is necessary. However, be sure the order (memorandum form, G-29 or I-167, judges worksheet or a written decision) is in the file to justify the lack of action on the warrant.

13 - 2 Designation of Country

Reference: 8 CFR 242.17(c), Section 243(a)

The fixing of a place of deportation is an integral part of the deportation proceedings. The alien has the option of designating a place of deportation. At the deportation hearing, the Immigration Judge notifies the alien of a country or countries that he has directed should the alien's designation fail to accept him as a deportee. The alien is allowed to designate only one country. He cannot designate a contiguous or adjacent country or island in which he is not a native, citizen, subject national, or former resident. Failure to give him the opportunity for such designation will invalidate the proceedings.

The deportee, upon final order, is notified on Form I-294 of the country to which he will be deported.

This Service must inquire as to whether the designated country will receive the deportee. The burden is upon the Service to inquire and is not the alien's responsibility to do so.

Finally, the countries of deportation will be selected by the Attorney General when:

a. No designation by alien

b. No response or negative response from designated country

c. Designation rejected as prejudicial to the United States

Therefore, deportation is directed to the country of which the alien is a subject national or citizen. A particularly interesting development has occurred with our recognition of the People's Republic of China as the sole legal government of China. The country of nationality of persons born on the mainland is now the People's Republic of China. Evidently, a determination of the country of nationality depends primarily on political as opposed to geographical consideration.

Furthermore, deportation may then be directed to any one of the following countries:

a. Country from which last entered

b. Country of foreign port of embarkation for the United States

c. Country of birth

d. Country in which the place of his birth is situated at the time of his deportation order

e. Country of prior residence

f. Country which controls his birth place

g. Any country willing to accept him.

13 - 3 Final Order

Reference: Section 106, 8 CFR 243.1

An order of Deportation (Voluntary Departure/Deportation) entered by an Immigration Judge becomes final upon dismissal of an appeal by the Board of Immigration Appeals, upon waiver of appeal, or expiration of appeal time. If under consideration of the Board of Immigration Appeals, it will become final as of the date of the Board's discussion. An order of voluntary departure with an alternate order of deportation is a final order of deportation.

In United States ex. rel. Cefalue v. Shaughnessy, 117 F.Supp. 473 and United States ex. rel Lam Tuk Man v. Esperdy, 280 F. Supp. 303 (1967), the Courts have held that the Attorney General should have an unhampered period of six months within which to effect deportation, and in cases such as private bills, the voluntary departure period may extend beyond a six-month period. Obviously, the Service would be seriously hampered in enforcing an order of deportation where extensive periods of voluntary departure have preceded the order of deportation in an alternate order case.

It is now Service policy that the tolling of time for an order of deportation begins when the period of voluntary departure (set by the Immigration Judge or Board of Immigration Appeals and/or extended by a Service Officer) expires and the alternate order of deportation takes effect.

Chapter 14 -- Travel Arrangements

CHAPTER 14

TRAVEL ARRANGEMENTS

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Transfer Arrangements	I-216	AM 2798.80-87(c)	
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TRAVEL ARRANGEMENTS

14 - 1 General

Reference: AM 2798.69, 78, 79, 80, 81, 82, 87, 125(4), 126, 127, 128, 133, 134, 135, 136, 137, 138, 139, 140, 141

The process of arranging transportation can be simplified if a system is developed to pull all of the loose ends together so that nothing is overlooked. The four-part system presented in paragraph 14-7 is recommended, but is not mandatory.

14 - 2 Custody

Transportation is arranged for aliens who are in Service custody; therefore, the officer arranging transportation should always determine first if the alien is in custody. Evidence of custody may be in the form of a WD (I-205) and a demand for surrender (I-166), an I-200 or I-221s, an I-274 or I-274A, an I-202 (see Chapter 22), or an I-296 (or any form indicating an order of exclude and deport).

14 - 3 Travel Document

A document valid for the alien's entry into a foreign country must be available or the carrier may not board the alien. If a TD is not required, an explanation such as "Canadian consent granted" should be included in the document envelope. If the alien is being escorted to a foreign country, the escort may be required to have a valid passport and, unless waived, a valid visa to enter the foreign country. The escort should obtain the visa when picking up the alien's travel document.

14 - 4 Reservations

Air transportation reservations are normally made telephonically and should be checked against a current copy of the Official Airline Guide (OAG). In particular, the North American edition should be checked to make sure that there are no scheduled stopovers in the United States that you were not aware of. Many "direct" flights are not "non-stop." Remember that any stopover in the United States must be coordinated with the Service office having jurisdiction over the stopover location and arrangements for a "meet" and "baby sit" must be made at each stopover location. For this reason, it is desirable to avoid or limit stopovers in the United States.

Surface transportation is less complicated and can be obtained telephonically. Remember that unless the transportation (bus or train) is departing immediately from the United States, an escort will be required. Most districts have some type of contract with a charter bus company. Charter buses are preferable for moving large numbers of aliens between points in the United States or to the border because they are more economical and are readily available.

Although reservations normally do not need to be confirmed, it is a good practice to record the name of the carrier agent who makes the reservations as well as the computer verification number in case there is any later mishap.

14 - 5 Tickets

A transportation ticket ideally may be provided by the alien and should be placed in the document envelope. Carriers may be required to provide transportation as well (see Chapter 12). In which case the carrier may provide a ticket or "prepay" for a ticket at the airline of choice. In the event of a prepaid ticket, the minimum information should include the name of the ticket agent, the name of the carrier agent, and the date the reservation and ticket was prepaid. If the alien has a return ticket make sure it is not the type of excursion ticket which can only be used with certain restrictions (e.g. between certain dates) before making the travel arrangements.

The majority of the cases, unfortunately, will not have tickets provided and a GTR must be prepared. The instructions for preparing a GTR vary slightly from Region to Region and a sample copy of a locally prepared GTR should be included here. Additionally, local instructions for handling of a GTR when transportation is partially funded by the alien, should be obtained. Also consult AM 2605.

The major consideration in preparing a GTR is cost. Prior to preparation, the responsible officer should ask the officer responsible for the AT&W G-104 if there are sufficient funds to cover the GTR. If not, the funds should be requested and the alien simply not moved until funds are available.

14 - 6 Special Care

In certain mental or physically ill cases arrangements should be made to have some form of medical help waiting for the alien when he arrives in his home country. If this cannot be accomplished by direct contact, it can usually be accomplished through the respective consul. If he is a "CINS" case or otherwise dangerous to the public, the police at his point of arrival should be notified. If an alien is determined to require special care (see Chapter 15) or is dangerous to the public, the alien should be escorted. The AM (Sections 2798.125 and 133 through 141) and OI 287.15 should be consulted.

14 - 7 Document Envelope

The Document Envelope (Form I-164) should be used in every case as a check list to ensure that all of the necessary arrangements have been made. Additionally when an alien is traveling unescorted by aircraft between two points in the United States and is being met at the point of arrival by Service personnel, it is very important to have a picture of the alien affixed to the outside of the document envelope for identification purposes. There are four specific requirements which should be checked off before an I-164 is considered complete:

1. Travel document and I-94 -- if there is no TD, there should be a written explanation enclosed.

2. Ticket or GTR -- if there is no ticket or GTR, a written explanation should be enclosed.

3. Authority -- one of the following documents should be present:

    a. I-205 and I-294, or

    b. I-274 or I-274A, or

   c. Copy of I-200 or I-221s

   d. I-202, or

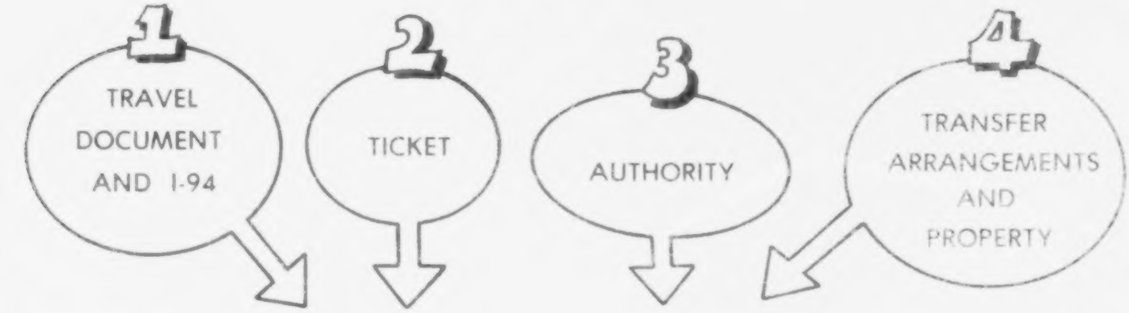
   e. I-259 and I-296

4. Transfer of property arrangements -- this should include a copy of the itinerary, the DATYJ and DAZAS, Form I-216, Forms I-380 and I-287, if necessary, and a Form G-391 which indicates if the alien is a "CIN" or "NONCIN" case and other instructions as necessary.

5. In all cases a photo should be affixed to the Form I-164.

6. The Form I-164 should be handed to the flight attendant with instructions to deliver it to an immigration officer upon arrival at the alien's destination. The alien should be advised to remain in his seat until he is summoned by the immigration officer or flight attendant to deplane.

ARRANGING TRANSPORTATION

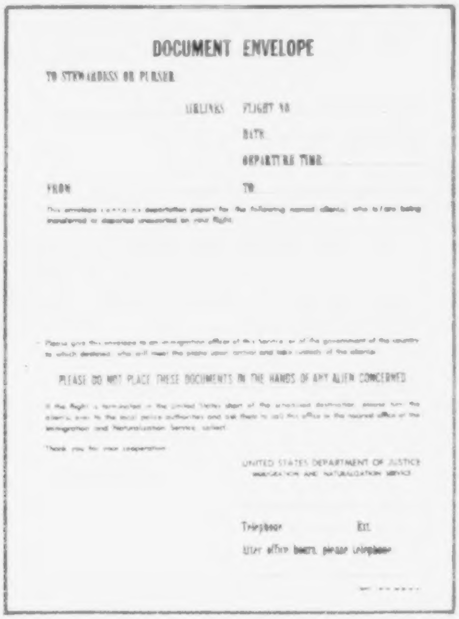


1 TRAVEL DOCUMENT AND I-94

2 TICKET

3 AUTHORITY

4 TRANSFER ARRANGEMENTS AND PROPERTY



DOCUMENT ENVELOPE

TO STEWARDESS OR PURSER

AIRLINES FLIGHT NO

DATE

DEPARTURE TIME

FROM TO

PLEASE DO NOT PLACE THESE DOCUMENTS IN THE HANDS OF ANY ALIEN CONCERNED

Thank you for your cooperation.

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

Telephone Ext.

After office hours, please telephone

1
PASSPORT
OR
SALVO CONDUCTO
OR
EXPLANATION
AND
I-94

2
TICKET
OR
GTR
OR
EXPLANATION

3
I-205
AND
I-294
OR
I-274(a)
OR
I-202
OR
I-296

4
I-216
AND
G-391
AND POSSIBLY
I-380
AND/OR
I-287

Chapter 15 -- Special Care & Handling - Mental Cases

CHAPTER 15

SPECIAL CARE AND HANDLING - MENTAL CASES

SUBJECT	FORMS	REFERENCE	PARA
Advance Notice		OI 243.2(d)	
After Hearing	I-141	See Form	
Alcoholism		Det. Off. Hdbk. Chpt. XIII, 13-40	
Application	I-243	See Form	
Approval	I-202	See Form	
Authority			15 - 2
Certification	I-234		15 - 3
Common Carrier		Det. Off. Hdbk. Chpt. XXII, 22-7	
Drug Addiction		Det. Off. Hdbk. Chpt. XIII, 13-30	
Emotional Disturbances		Det. Off. Hdbk. Chpt. XIII, 13-11 through 13-29	
Escort Duty		Det. Off. Hdbk. Chpt. XV, Chpt. XXII 22-1 to 7	
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SPECIAL CARE AND HANDLING - MENTAL CASES

15 - 1 General

Reference: INA 242(b), 8 CFR 103.5a(c), 8 CFR 212.2, 8 CFR 242.1(c), 8 CFR 242.3, 8 CFR 242.9(b), 8 CFR 242.11, 8 CFR 299.1, INA 243(f), 8 CFR 243.6, 8 CFR 243.7, OI 212.2, 214.2(k)(4), OI 243.2, OI 243.2(c), OI 243.2(d)(e), Detention Officer's Handbook.

15 - 2 Authority

The authority to remove a mental case is found in both INA 242 and 250. Under Section 242 of the Act, the removal could be accomplished either before or after the institution of deportation proceedings, depending upon circumstances governing the particular case. Section 250 of the Act may also be utilized if advantageous to the Government.

15 - 3 Certification

Form I-234, Certification as to Alien Becoming a Public Charge or Becoming Institutionalized at Public Expense, is used to support a deportation charge under Section 241(a)(3) of the Act. However, it is invaluable in the handling of a mental case as it is more comprehensive than Form I-141, Medical Certificate, and calls for a Clinical Record (Clinical History). Experience has shown that the Service cannot obtain too much information concerning the mental history of an alien being removed, both for our use and that of the foreign government involved.

15 - 4 Liaison

Although voluminous authority is contained in the Act for the removal of mental cases, not enough emphasis can be placed upon early, continuous, and thorough liaison from the inception through completion of the removal. Aspects of this necessary liaison, which encompasses enlisting cooperation at every stage of the removal process, are contained in the Detention Officer's Handbook. Such references have been cited elsewhere in this chapter and do not bear repeating here. It is incumbent upon the Service to insure that the receiving country has agreed to accept the alien and that they are fully cognizant of his or her mental condition. Many times an interested relative, either in the U.S. or in the receiving country, can assist in making the necessary arrangements. It must be borne in mind that in almost any mental removal case, a foreign public relations problem could occur. Therefore, OI 243.2(d) should govern concerning advance notification.

In many cases, the services of local charitable, social, and religious organizations can be enlisted to assist in phases of the removal, including necessary funds. Their cooperation and aid can be invaluable.

It has also been found helpful for the escorting officer or officers to visit the alien prior to the actual removal. This will give the escort(escorts) an opportunity to size up the alien and also reassure him(her) with a view to eliminating or at least easing the trauma associated with a lengthy journey.

15 - 5 Medical

Form I-141, Medical Certificate, is normally used. This form may be furnished to foreign consulates together with a clinical history for their use in arranging custodial care at the destination, if required. OI 243.2 also calls for an executed I-141, with clinical history, to accompany the alien. The I-141 should be carefully checked to see that it is complete and all questions are answered. A clinical history should always be obtained at the same time. Form I-234, previously mentioned, may also be used.

If the alien is removed from an institution, information should always be obtained as to the behavior which may be anticipated from the alien. Also, a supply of medication, if appropriate, should be obtained with necessary instructions on administering such medication.

15 - 6 Travel Document

A valid travel document or consent of the receiving country is a requirement for removal of all aliens and information concerning the requirements of the various countries is contained in the Travel Document Handbook.

In many cases, application for the travel document is made simultaneously with a request for further care and treatment. The presentation will include a medical and clinical summary from the hospital or institution in which the alien has been detained or treated. Generally speaking, it will be necessary that hospitalization in the country of destination be arranged prior to transportation arrangements being made. An exception would be if only outpatient care is indicated and such has been arranged.

Even when a valid travel document is on hand, a presentation should be made in all mental cases to preclude or forestall a foreign public relations problem, adverse publicity, or an incident reflecting unfavorably on this Service.

15 - 7 Sedatives

Aliens with mental problems severe enough to require an escort, may also require some form of sedation in order to ensure the safety of the alien and the traveling public. United States Public Health officials or other competent medical authorities should be contacted in order to administer a sedative prior to departure. If the travel time is greater than the anticipated effect of the sedative, the medical authority should be requested to prescribe (and provide, if possible) a sedative which can be administered by the escorting officers.

Chapter 16 -- Stays of Deportation

CHAPTER 16

STAYS OF DEPORTATION

SUBJECT	FORMS	REFERENCE	PARA
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Immigration Judge	No Form In Writing	8 CFR 243.4, 8 CFR 242.22, 8 CFR 103.5	16 - 2
Board of Immigration Appeals	No Form In Writing	OI 3.1(g), 8 CFR 243.4	16 - 3
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JUDICIAL STAYS			
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Habeas Corpus		Section 106(a)(9)	16 - 8
Declaratory Judgments			16 - 9
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STAYS OF DEPORTATION

ADMINISTRATIVE STAYS

16-1 District Director

Reference: 8 CFR 243.4, O.I. 243.3, Section 237(d), 8 CFR 237.1, 8 CFR 103.7(b)(1)

Administrative stays may be granted by the District Director when there are compelling humanitarian factors.

Application is made on Form I-246. A passport valid for 60 days past the time requested is required.

A District Director may grant a stay of deportation for such a period of time as he deems necessary.

Under O.I. 243.3 the District Director may grant a stay of deportation upon his own initiative without application being made by the alien.

There are a multitude of reasons the District Director may give a discretionary stay. Two common reasons are:

ONE: MEDICAL PROBLEMS

Watch for medical fakers.
A medical dictionary should be consulted.
Many impressive sounding medical terms mask minor problems. Examples: "Hemangloma" is a strawberry birthmark. "Xanthelasma" is white spots on the eyelids caused by a cholesterol problem and "Hallux Rigidus" is a crooked big toe.

A stay of deportation granted for medical reasons should be based on evidence that travel would endanger the alien's health or that appropriate treatment is not available in the alien's country.

TWO: DISPOSITION OF PROPERTY

Arrangements to dispose of property or assign power of attorney, should rarely take more than 30 days.

Neither the filing of an application for stay of deportation nor the failure to receive notice of decision relieves the alien of the obligation to present himself for deportation in accordance with a notice to surrender.

An excluded alien may seek a stay of deportation. The District Director, in his discretion, can grant such a stay at his own instance or upon request of the alien.

There is direct statutory authority for stay of deportation on behalf of an alien whose testimony is needed in a prosecution for violation of immigration laws. (Section 237(d).

There are only two "shall nots" for the District Director:

> ONE: He shall not grant a stay of deportation solely to permit the introduction of a private bill or in anticipation of a congressional request for a private bill report.
>
> TWO: He shall not stay deportation after an alien is released from imprisonment for parole, probation or the possibility of re-arrest for the same offense.

No appeal can be taken from the decision of the District Director regarding an application for a stay of deportation. Since there is no appeal, the administrative remedy is exhausted, thus the courts may review the case.

16-2 Immigration Judge

Reference: 8 CFR 243.4, 8 CFR 242.22, 8 CFR 103.5

The Immigration Judge may stay deportation pending his decision on a motion to reopen or a motion to reconsider. A denial by the Immigration Judge is appealable to the BIA. Either the Immigration Judge or the BIA may stay deportation pending decision on the appeal to the BIA.

Application for a stay is frequently made simultaneously to the Immigration Judge and the District Director.

The mere filing of a motion to reopen or reconsider does not automatically stay deportation.

16-3 Board of Immigration Appeals

Reference: O.I. 3.1(g), 8 CFR 243.4

A motion to reopen, filed with the BIA does not automatically stay deportation.

16 - 4 Private Bills

Reference: OI 107.1, OI 242.10, Code Book: BAHEW, GALAK, KAWUX

When a private bill is introduced, deportation is stayed by agreement with Congress. This stay may be overcome if the Commissioner feels circumstances warrant such action.

A stay of deportation shall not be authorized solely to permit the introduction of a private bill or in anticipation of receiving a Congressional committee request for a report on such bill. A private bill stay is granted if and only if a report has been requested by the Judiciary Committee. The Senate automatically requests a report. However, the House will not request a report if rule-4 applies.

Rule-4 states: The House Judiciary Committee will not request a report on a bill introduced on or after March 3, 1971, on behalf of an alien who last entered the United States as a nonimmigrant, stowaway, in transit, deserting crewman or by surreptitiously entering without inspection.

When a stay has been granted in a private bill case, the date set for deportation or voluntary departure under a final order shall be February 1, of the next odd numbered year.

If there is adverse action on a private bill case, the Service shall be notified by a KAWUX wire. Departure should be enforced in 30 days. The District Director should notify Central Office if he does not intend to remove the alien.

The introduction of a private bill does not stay administrative proceedings. Administrative proceedings should be taken to conclusion. If there is a final order of deportation in the case, a private bill stay is not a voluntary departure extension.

16 - 5 243(h)

Reference: Section 243(h), OI 243.3(b), 8 CFR 242.17(c)

Relief under Section 243(h) is considered by the Immigration Judge. Such relief is not available to aliens in exclusion proceedings.

A favorable finding under Section 243(h) stays deportation. However, the mere filing of a motion to reopen to advance a claim under 243(h) does not automatically stay deportation.

Under 243(h) withholding of deportation is mandatory if the Attorney General determines that the alien's life or freedom would be threatened in the country of deportation.

16 - 6 Asylum

Reference: 8 CFR 208, Section 243(h), 8 CFR 242.17(c)

After an order to show cause has been issued, asylum may only be considered by the Immigration Judge. Applications for asylum filed prior to the issuance of an OSC shall be considered by the District Director.

A request for asylum introduced by an alien during deportation proceedings shall also be considered as a request for withholding deportation under Section 243(h).

An asylum request introduced following completion of a deportation hearing shall be considered as a motion to reopen the hearing for the purpose of submitting a request for withholding of deportation under Section 243(h). An asylum request after a hearing will be accepted for filing as a motion to reopen only if it reasonably explains the failure to assert an asylum claim in the hearing. In any event, the mere advancing of such a claim as a motion to reopen does not stay deportation.

JUDICIAL STAYS

16 - 7 Petition for Review

Reference: Section 106

In general the term "Judicial Review" means a review by the courts of a final order of deportation. However, in the case of Foti the Supreme Court found that "review" meant not only final orders could be reviewed but all aspects of deportation proceedings could be reviewed. Those other aspects are called "Ancillary Matters."

Not all petitions for review are mandatory stays of deportation. For example, a petition for review of a BIA denial of a motion to reopen would not be a mandatory stay. Of course, a petition for review of a final order of deportation is a mandatory stay and this is the form of review most frequently seen by the deportation officer.

Venue rests with the judicial court having jurisdiction over the location of the Immigration Judge or in the judicial circuit of the petitioner's residence, but not in more than one circuit. No action in any State Court will automatically stay deportation.

Action is brought against the Immigration and Naturalization Service, Attorney General and District Director. The court's order is served on the Attorney General and District Director. The District Director _must_ issue a stay of deportation pending the court's decision.

The court reviews only the administrative record. The fact that an alien has a right to judicial review does not itself stay deportation.

Notice by telephone from Clerk of Court is ample notice on which to stay deportation.

The District Director has 35 days in which to answer the original appeal to the court for review. This response is usually made through the Trial Attorney's office. The District Director will usually ask the court for a Summary Affirmance. If the court affirms the position of the District Director it will give a mandate. This will be included in the court's order. The mandate is usually 21 days. In any case, the District Director cannot deport the alien until the mandate issues. Sometimes the mandate will issue "forthwith" in which case deportation may be effected immediately.

If the alien is in custody, a petition for judicial review does not remove him from custody. During judicial review the alien is bondable. However, if the District Director is seeking a summary affirmance, he may hold the alien in custody, since deportation is considered imminent.

The Immigration and Nationality Act gives circuit courts sole and exclusive review of final orders of deportation. However, in practice an alien may appeal to a District Court. Such courts often advance a claim to jurisdiction under the Administrative Procedure Act, 5 U.S.C. 1009. Citing this act as authority, a District Court will often rule on whether or not the District Director abused his discretion or acted in an arbitrary or capricious manner in a case. Additionally, aliens frequently petition a court before all administrative remedy has been exhausted.

It must be remembered that the order of a judge, even an order which you think is incorrect or issued by a judge lacking jurisdiction, must be obeyed until it is reversed. A close liaison with the Assistant U.S. Attorney in charge of the court case is often beneficial in assuring expeditious handling by the court.

The District Director has nothing to hide. He is not trying to "railroad" any person out of the United States. Therefore, litigation of deportation cases should occasion neither umbridge nor anxiousness in the deportation officer.

16-8 Habeas Corpus

Reference: Section 106(a)(9)

Any alien in custody may obtain judicial review through Habeas Corpus proceedings this includes those under exclusion proceedings as well as those under deportation proceedings.

Jurisdiction lies with the United States District Court where the alien is detained.

Under Habeas Corpus proceedings the court may:

ONE: Dismiss the petition.

TWO: Issue a writ. In which case the District Director must present the alien to the court.

THREE: Issue and serve on the District Director an Order to Show Cause why a writ should not be issued. This is the most usual action of the court. It permits the District Director to respond to the allegations without physically bringing the alien into the court.

In response to an Order to Show Cause the District Director should answer all allegations and certify the reasons for holding the alien in custody. Evidence offered as proof that the detention is lawful is usually limited to presenting the record of deportation proceedings at the Show Cause hearing.

At the hearing on the Order to Show Cause the court may:

ONE: Dismiss.

TWO: Issue the writ of Habeas Corpus. The writ is limited to the record unless the alien claims United States citizenship.

THREE: Order a full hearing.

FOUR: Remand for correction.

FIVE: Release the alien. Usually because the court finds that the deportation order is not correctable.

SIX: Release the alien unconditionally for whatever reason the court decides.

SEVEN: Allow the alien to remain to pursue a remedy to his problem through removal of the grounds of deportation. (For example; by a pardon).

NOTE: If the court issues only an Order to Show Cause, deportation is not stayed. The stay must be ordered through a temporary restraining order or an injunction. However, if only an Order to Show Cause is issued, the District Director should as a courtesy to the court, advise the court that he intends to deport the alien. This will permit the court to grant whatever injunctive relief it wishes.

16-9 Declaratory Judgements

The United States District Court has jurisdiction in Declaratory Judgements.

The purpose of a declaratory judgement is to review Immigration and Naturalization Service actions other than final orders of deportation.

A declaratory judgement orders that a decision be made. It may address improper procedures, improper behavior by officials, or the denial of stays because of the abuse of discretion.

The usual declaratory judgement seen by deportation officers is the Writ of Mandamus. Such a writ may, for example, direct the immediate adjudication of a petition before the Immigration and Naturalization Service.

All administrative remedies do not have to be exhausted since this writ is an order to move the Immigration and Naturalization Service to take administrative action.

The bringing of a declaratory review proceeding does not itself stay deportation. However, the court, may issue a stay in the form of a temporary restraining order or an injunction. Such stays are not awarded automatically and will be issued only upon a showing that the action has substantial merit.

If declaratory judgement is filed during deportation proceedings, the six months custody time continues to toll, because the declaratory judgement does not stay deportation.

16 - 10 Injunctive Relief

The two most frequently used forms of injunctive relief are:

ONE: Temporary restraining order. This is an emergency remedy of brief duration (not exceeding ten days) issued in exceptional circumstances and only until the court can hear the arguments and evidence in a case.

TWO: Injunction. There are many kinds of injunctions: temporary, permanent, preliminary, perpetual, etc. They are of a more permanent nature than the temporary restraining order, but all act to compel or restrain action through the authority of the court.

Both the temporary restraining order and injunction are mandatory stays of deportation.

Chapter 17 -- Departure Control

CHAPTER 17

DEPARTURE CONTROL

INDEX

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DEPARTURE CONTROL

17 - 1 General

Reference: 215 INA

Section 215 provides statutory authority to prevent the departure of aliens from the United States and also provides that an alien's departure may be controlled by reasonable rules and regulations.

17 - 2 Authority

Reference: 22 CFR 46.2

Generally speaking, District Directors are designated as "departure control officers" and they have the authority to prevent the departure of an alien if it is determined that the alien's departure would be "prejudicial" to the interests of the United States. Furthermore, the departure control officer has the authority to take possession of the alien's passport in order to prevent his departure (22 CFR 46.2(c)).

17 - 3 Prejudicial To the United States

Reference: 22 CFR 46.3

An alien's departure may be deemed prejudicial to the United States if (inter alia):

a. His departure has an adverse impact on national defense.

b. He has failed to comply with the draft regulations.

c. He is a fugitive from justice.

d. He is needed as a witness in a criminal case.

17 - 4 Abandonment of LPR Status

Reference: OI 215.1(a) and 250 INA, Chapter 22

Deportation Officers will come in contact with lawful permanent residents in removal procedures who are obviously intending to abandon status. Although the removal at Government expense will normally sustain a Section 212(a)(17) charge, it is a good practice to have the alien execute a Form I-407 as well.

Chapter 18 -- Appeals and Motions

CHAPTER 18

APPEALS AND MOTIONS

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APPEALS AND MOTIONS

18 - 1 General

An appeal of a deportation hearing will generally stay execution of the order while an appeal of a decision relating to a motion to reopen will not. An appeal of a decision concerning a formal application (i.e, I-506) will not stay deportation. A motion to reopen either a deportation hearing or a decision concerning a formal application, regardless of whether filed with the BIA or not, will not stay deportation.

18 - 2 Appeals, General

An appeal is a written request to a higher authority to settle a disagreement between the original decision maker and the appellant. The original decision maker determines facts based upon the actual evidence presented. The appellate authority normally does not redetermine the facts, but considers whether or not the original decision maker applied the appropriate rules and made the correct determination of law. The appellate authority may sustain the original decision, overturn the original decision, or remand the case for reconsideration. Appeals may be taken in Immigration Judge deportation or exclusion proceedings, custody determination, or in informal application proceedings.

18 - 3 Motions to Reopen/Reconsider, General

A motion to reopen/reconsider (MR/R) usually sets forth new facts for consideration which were not present when the original decision was entered or presents a new argument in support of the existing facts. An MR/R is filed after the original decision is final. There is no statutory time period within which to file a MR/R.

A motion to reopen/reconsider may be filed to request reopening or reconsideration of any hearing or formal application procedure.

A motion to reopen/reconsider does not constitute a stay of deportation regardless of the purpose. The circumstances relating to the motion may, in themselves, constitute the grounds for granting a stay of deportation or extension of voluntary departure, but the fact that a MR/R has been filed is insufficient in and of itself.

18 - 4 Appeal Period

An appeal period in a formal application procedure is 15 days (8 CFR 103.3). The appeal period in a deportation hearing is 10 days (8 CFR 242.21). An appeal of a custody determination may be made at any time while in custody or within seven days of release from custody (8 CFR 242.2(b)).

18 - 5 Appeal Forms

Reference: 8 CFR 242.21, 8 CFR 103.3

A form I-290A is used in deportation hearing appeals and Form I-290B is used in appealing a decision in a formal application procedure.

18 - 6 Appeal of Denial of VD

There is no appeal from a District Director's denial of voluntary departure.

18 - 7 Record of Proceeding

Reference: OI 3.1(g)(2), Chapter 19, AM 2710.03

A record of proceeding is to accompany any appeal or motion to reopen and reconsider. When a MR/R is filed, while the D&D section has control of the "A" file the Deportation Officer should make copies of the pertinent parts of the record portion, separate the record portion into a separate folder, forward the record portion with the MR/R to the Immigration Judge Unit (through the Trial Attorney), and retain the "A" file in D&D. If the MR/R is to be forwarded to the BIA, the DD must indicate in writing whether or not a stay of deportation has been granted.

Chapter 19 -- Record of Proceeding

CHAPTER 19

RECORD OF PROCEEDING

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RECORD OF PROCEEDING

19 - 1 General

Reference: AM 2710.02 and 2702.09

The record of proceeding is the permanent material constituting the record of any formal application, hearing, or proceeding before this Service and is maintained on the left side of the "A" file.

19 - 2 Applications

Any formal application, such as an I-130, or an I-212, with all supporting documents, such as birth certificate and marriage certificate, are part of the record of proceeding and should be maintained on the left side of the file.

19 - 3 Work Sheets

Any notes or forms utilized to control the work process, such as Form I-213, I-265, I-170, or I-486, are not record material and should be maintained on the right side of the file. Note that certain work sheets, such as the I-213, may be introduced as evidence in a deportation hearing; accordingly, any document admitted into the record as evidence is record material and should be maintained on the left side of the file.

19 - 4 Hearing Records

The OSC/WA, I-286, or any other document initiating the deportation hearing; any document marked "exhibit" which has been admitted into the record as evidence; any decision relating to the hearing, and any appeal process or record judicial review, is record material and should be maintained in chronological order on the left side of the file.

19 - 5 Forwarding or Transferring of Record

Reference: AM 2710.03

Whenever a record of proceeding must be forwarded for review by the BIA or a Federal court, the record should be duplicated and a complete copy retained in the left side of the "A" file with a note indicating the whereabouts of the original.

Whenever a record of proceeding, which has been removed from the "A" file, is transferred to another location, other than that of the "A" file, the forwarding official must send a memo to the "A" file indicating the new whereabouts of the file.

When judicial review or BIA action is complete and the record material has been returned to the "A" file, all of the duplicate records should be destroyed and only the original should be retained.

19 - 6 Voluntary Departure

A request for voluntary departure or for extension of voluntary departure is not a formal application nor is any application or request which does not require a fee. Accordingly, any requests for VD and all responses including Form I-210 shall be maintained on the right side of the file with the non-record material.

Chapter 20 -- Docket Control

CHAPTER 20

DOCKET CONTROL

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Chapter 21 -- Exclusion Process

CHAPTER 21

EXCLUSION PROCESS

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INDEX

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EXCLUSION PROCESS

21 - 1 General

Reference: Inspectors' Handbook 18-8, 18-9, 18-10, Sec. 212 INA, Sec. 235(c), OI 204.6, 212 8 CFR, 212.4, 212.4(g), Sec. 213 INA, 22 CFR, 8 CFR 223(a)(5), 223(a)(6), 236 INA, 237 INA

The exclusion process is initiated in the Travel Control Unit by the inspector when he establishes prima facia excludability and determines carrier responsibility, when applicable.

The deportation officer takes over this exclusion process after the Immigration Judge orders exclusion and deportation. When the exclusion process is initiated at a land border port, the inadmissible alien waits for the date of his hearing outside of the United States. At land border ports the exclusion of the inadmissible alien is direct and immediate.

The remainder of this chapter deals mostly with the deportation officer at ports of entry other than land border ports, "where it is impracticable to have the applicant return to the country where the journey originated."

21 - 2 Motions and Appeals

Reference: Sec. 236.3(a) and (b), 8 CFR 103.5, OI 103.5(b)(c)(d)

The deportation officer must ensure that he is not removing an applicant for asylum or one who has appealed the decision of the Judge and is awaiting BIA decision.

21 - 3 Asylum

Reference: 207, 208 INA, 8 CFR 236.3

The deportation officer must specially be aware of the Service requirement that full opportunity be given to foreign nationals to have their requests for asylum considered on their merits and not arbitrarily or summarily refused by U. S. personnel. If at any time prior to removal, the inadmissible applicant makes known to a deportation officer that he wishes to request asylum, the deportation officer will see to it that he be given the opportunity to execute Form I-589 for consideration.

21 - 4 Removal

Reference: Form I-259, I-275, I-297, I-94, Sec. 236.7(a)(b)(c) INA, OI 236, OI 236.6

After the deportation officer has reviewed the file and concludes that he may proceed with compliance of the order of the Immigration Judge, he may return the alien ordered excluded to the carrier for immediate removal. This is generally done by the use of Form I-259 when a carrier is liable and mandating that the carrier provide safeguards throughout the remainder of the exclusion process. This relieves the Service of that liability. Provision is made, however, for the District Director to ascertain whether or not security should be provided by the carrier or the Service.

Reliability of the carrier, as well as the foreign national, are factors to be considered.

Cost of the removal, while always the fiscal responsibility of the carrier, may be limited to the passage if it is ascertained that the carrier exercised due diligence prior to embarkation.

21 - 5 Interview and Photographs of Aliens in Custody

Reference: OI 242(6)(e), AM 2798.32, AM 2798.35(g)(3)

Special mention is made to the deportation officer regarding this aspect of detention because the modifications have not been in degree but direction. Representatives of the media are permitted to interview and photograph aliens in custody who are detained in Service and non-Service institutions under certain conditions.

The deportation officer must also be alert to AM 2798.35(g)(3) in that the Service considers it improper to obtain and use personal information from one detainee about another who refuses to be interviewed by the media.

21 - 6 Docket Control

Exclusion cases are not maintained in the docket. Control of cases which have been paroled in, for any purpose, are to be maintained by the Travel Control Branch. At no time should "parole type" docket cards be counted in any part of the docket for statistical purposes. D&D assumes control of the case after a final order of exclusion has been entered and the alien is ready for removal. If for any reason the case cannot be removed, the control of the case should be reverted to Travel Control Branch.

Chapter 22 -- Removal -
Sec. 250

CHAPTER 22

REMOVAL

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REMOVAL

22 - 1 General

Reference: Sec. 250 INA, II Handbook Chapter ii

Any alien who falls into distress may be removed at Government expense. This includes nonimmigrant aliens as well as lawful permanent resident aliens.

22 - 2 Qualifications

Reference: Sec. 250, OI 250.1, ID 1454

The principle applicant must be an alien who has fallen into distress from causes arising after entry. The principle must apply for removal and must be capable of understanding the consequences of removal. United States citizen dependents may be included and their transportation may be paid for by the Government.

22 - 3 Procedure

Reference: OI 250.1

The applicant for removal shall complete Form I-243 paying particular attention to the certification from public officials regarding the amount of public assistance received.

Chapter 23 - Visa Process

CHAPTER 23

VISA PROCESS

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VISA PROCESS

23 - 1 General

Reference: INA 101(a)(4)(15(27), 201(a)&(b), 202(a)(b), 203(a)-(h) & Sec. 245. Immigrant Visas are issued to numerous classes of eligible aliens outside the United States for various reasons.

23 - 2 Packet System

Reference: Foreign Affairs Manual, Volume 9, Part 3

Packet #1 is furnished upon receipt of the initial inquiry from the intending immigrant whether by mail, telephone, or in person. The post should furnish Packet #1 which consists of information sheet (Form OF-168), preliminary questionnaire (Form OF-222), which is submitted by an alien not eligible for immediate relative or preference status. When the post receives the preliminary questionnaire, it is reviewed and a determination is made on what version of Packet #2 should be sent out.

Packet #2(a) has 5 variants, the proper choice depends on the method by which the alien should establish entitlement to an immigrant classification. Packet #2(a) goes to an alien whose occupation may be within schedule A of Department of Labor (exhibit I to 22 CFR 42.91(a)(14)). The packet consists of a covering letter (Form DSL-988), two copies of the application for Alien Employment Certification (Department of Labor Form MA7-50A), and the preliminary questionnaire (Form OF-222). The covering letter to this packet (Form DSL-988) invites the applicant to complete both copies of Form MA7-50A and return them with supporting documents to consular office for review, 22 CFR 42.91(a)(14).

Packet #2(b) is sent to all applicants who require prearranged employment to obtain a labor certification because their occupations are not listed on schedule A. This packet consists of covering letter (DSL-988) an information sheet titled "Certification by the Department of Labor" (Form OF-172), and the applicant's preliminary questionnaire (Form OF-222). Forms MA7-50 A and B should only be included in this packet to an applicant who specifically requests a set for transmission to the prospective employer.

Packet #2(c) consists of covering letter, information sheet, and applicants questionnaire is sent to all applicants who are found to be eligible under schedule B (exhibit III. 22 CFR 42.91 (a)(14). No file is created at this time.

Packet #2 (d) consists of covering letter, preliminary questionnaire, is sent to applicants who do not intend to seek gainful employment in the United States (see 22 CFR 42.91 (a)(14)(ii)). No file record created.

Packet #2 (e) consists of covering letter, and completed Form OF-222 questionnaire, is sent to applicants who should have requested their United States Citizen or LPR relative to file petition, Form I-130 in their behalf and who disregarded instructions not be submit Form OF-222. No file record is created.

Packet #3 consists of Forms OF-167, OF-169, and OF-179. It is to be sent immediately to applicants (including immediate relatives and special Immigrants) for whom evidence of entitlement to immigrant classification has been received at the consulate office provided the applicants priority date (if applicable) is within qualifying date established by the State Department. Evidence of such entitlement includes an approval petition or labor certification or proof that the alien will not have to seek employment in the United States.

It is at this stage of processing that Form OF-224B "Immigrant Visa Control Card" is prepared and date of mailing of Packet #3 noted on both copies thereof. (See 22 CFR 22.61).

Packet #3 is also sent to applicants who were previously sent Packet #3(a) and whose priority date later fall within the qualifying date established by the State Department or, were sent Packet #3(a) and subsequently returned completed Form I-179 showing that an accompanying spouse was born in a foreign state for which immigrant visa numbers are available. Also, that the alien or his spouse can otherwise benefit from an alternate chargeability under section 202(b).

Packet #3(a) is sent to an alien who is entitled to an immigrant classification but for whom an immigrant visa is not available. In some instances 3rd or 6th preference status may be advantageous to certain nonpreference aliens. (See 22 CFR 42.91(a)(14)).

Packet #3(b) consisting of DSL-988, the alien's Form OF-222, and any evidence that may have been submitted, is sent to applicants who cannot establish that they will not be gainfully employed in the United States or that section 212(a)(14) is otherwise not applicable.

Packet #4 consists of a letter, Form OF-171, which accords a specific appointment for the alien to make a formal application for an immigrant visa, two copies of Form OF-230 for each member of the family who will be immigrating at that time and instructions for a medical examination for each person concerned. If the applicant is chargeable to a numerical limitation which is oversubscribed, in terms of either category or foreign state or dependent area, an appointment should not be scheduled prior to receipt of immigrant visa numbers from the State Department.

23 - 3 Refusal of Entry into Canada

Any alien entering Canada to obtain a visa, (immigrant or nonimmigrant) must be in possession of a valid passport or other travel document assuring re-entry to the United States. Furthermore, citizens of certain countries also require a visitors visa to enter Canada, and the subject must also be in possession of a "Letter of Invitation" from the AMCON processing their visa. If the visa is denied for document deficiency, i.e. police clearance, medical, marriage certificate, etc., the letter of invitation is lifted at the Port of Entry and noted in the corner, "Subject will be allowed to return to the United States under section 211 of the Act" and letter is returned to the file control office.

Chapter 24 -- Criminal Prosecution

CHAPTER 24

CRIMINAL PROSECUTIONS

SUBJECT	FORMS	REFERENCE	PARA
Alien Registration		264(e), 8 USC 1304	
Authority		8 CFR 287.2	
Bringing in, Harboring		274, 8 USC 1324	
Change of Address	AR-11	266(b), 8 USC 1306(b)	
Counterfeiting		266(d), 8 USC 1306(d)	
Criminal Prosecution Control Card	G-195	See Form	
Docket Notations		AM 2798	
Entry of Alien		275, 8 USC 1325	
Failure to Depart	I-229	242(e), 8 USC 1252(e) See Form	
Failure to Obtain T/D	I-229	242(e), 8 USC 1252(e) See Form	
Failure to Report for Deportation	I-229	242(e), 8 USC 1252(e) See Form	
Failure to Register		266(a), 8 USC 1306(a)	
Fraudulent Statements		266(c), 8 USC 1306(c)	
Importation for Immoral Purpose		278, 8 USC 1325	
Reentry, Prior Deport		276, 8 USC 1326	
Reports	I-326, I-216, I-215b	See Forms	
Subversive Alien		277, 8 USC 1327	
Supervision, Violation	I-220b, I-229	242(d), 8 USC 1252(d) See Forms	
Willful Overstay, Crewmen		252(c), 8 USC 1282	
Witnesses, Service			

CRIMINAL PROSECUTIONS

24 - 1 Witnesses

A Deportation Officer may be required to appear from time to time as a witness both in administrative proceedings and in court. He should be thoroughly familiar with the basic rules of evidence, as well as appropriate conduct or demeanor in court. He should be neat in appearance and conduct himself as a representative of the United States Government. He should be pleasant, courteous, and cooperative. His every action should reflect impartiality toward the case.

He should maintain dignity at all times. While awaiting to appear as a witness, he should never engage in loud discussions or joking in the corridors or courtroom.

When called to take the stand, he should do so in a businesslike manner with no asides to attorneys or spectators and his bearing should not imply either overconfidence or selfconsciousness. He should sit upright in the witness chair and should not be impertinent or belligerent no matter how trying the circumstances. Facial expressions such as smirks, smiles, winks, or sneers, are to be avoided.

Testimony should always be given slowly and in such a manner that all concerned can hear it. Avoid terms understood only by Service personnel. He should offer his opinion only when asked to do so. He should tell the truth and any deviation is never justified. The witness who sticks to the facts and tells the exact truth is not likely to be shaken, no matter what tactics the defense counsel employs on cross examination. He should be respectful to both sides of the case and if a truthful answer to a question would be favorable to the defendant, he should not hesitate to make it. The officer should answer to the best of his knowledge only the questions asked and should not volunteer information. If a question is not understood, the officer should ask that it be repeated or explained before answering.

If something has not been brought out and should be developed, the officer should call it to the attention of the prosecutor after leaving the witness stand. If the prosecutor regards that evidence as essential, he may recall the officer to the stand.

The officer must not present an appearance of anxiety for conviction. He should be cool and alert. The best response to a provoking attack by counsel is to stick to the facts, remain calm and control one's temper. A witness who becomes angry and agitated is likely to contradict himself--the very aim of the defense counsel.

When excused from the witness stand, the officer should not indicate relief or despair. Trials, particularly in criminal cases, are frequently as much an appeal to emotions as to reason. Until leaving the courtroom, the witness remains subject to observation by the court and jury. Knowing glances, reflections of triumph, contempt or other emotional indications may weaken or destroy a favorable impression made while on the stand.

Chapter 25 - Forms Reference

CHAPTER 25

FORMS REFERENCE

FORM	DESCRIPTION
I-385	Alien Booking Record
I-243	Application for Removal
I-246	Application for Stay of Deportation
G-291	Authorization for Official Use of Government-Owned Vehicle
I-202	Authorization for Removal
I-43	Baggage and Effects of Detained Alien
I-77	Baggage Check
I-391	Bond Cancellation Notice
I-393	Bond Control Card
I-351	Bond Riders
I-269	Certificate of Identity
I-340	Demand for Surrender Under Bond
I-438	Departure Information Card
I-170	Deportation Case Check Sheet
I-156	Deportation Docket Control Action Slip or Notice
I-154	Deportation Docket Control Card
I-312	Designation of Attorney in Fact
I-164	Document Envelope
G-56	General Call-in Letter
I-114	Hospital Designation or Request for Medical Service
I-352	Immigration Bond
I-217	Information for Travel Document or Passport
I-143	Lookout Notice Worksheet
I-141	Medical Certificate
G-146	Non-Immigrant Checkout Letter
G-324	Non-Service Detention Facility Information Card
I-323	Notice Immigration Bond Breached
I-294	Notice of Country to Which Deportation has been Directed and Penalty for Reentry Without Permission
I-157	Notice of Deportation
I-247	Notice of Detainer
G-386	Notice of Stay of Deportation or Extension of Departure Date to Beneficiaries of Private Bills
I-229	Notice to Alien After Order of Deportation of Six Months Limitation for Departure
I-296	Notice to Alien Excluded by Immigration Judge
I-284	Notice to Carrier - Transportation Expense
I-264	Notice to Consular or Diplomatic Officer Concerning Detention of Alien
I-259	Notice to Detain, Deport, Remove, or Present Aliens
I-166	Notice to Surrender for Deportation
I-288	Notice to Transportation Line
I-392	Notification of Departure - Bond Case
I-286	Notification to Alien of Conditions of Release or Detention

FORM	DESCRIPTION
G-104	Obligation Authorization
I-220A	Order of Release on Recognizance
I-220B	Order of Supervision
I-203	Order to Detain or Release Alien
I-203A	Order to Detain or Release Aliens
G-391	Order to Escort Alien
I-49	Permit to Visit Detained Alien
G-590	Property Envelope
G-589	Property Receipt
I-305	Receipt of Immigration Officer
I-306	Receipt of Obligor
I-380	Record of Expenses Billable to Transportation Company
I-216	Record of Persons and Property Transferred
I-161	Record of Required Departure - Prior to OSC
I-267	Report for Information to Facilitate Issuance of Hong Kong Travel Document
I-249	Report of Aliens Detained at Service Expense
I-388	Report of Clothing Furnished "Needy" Alien Deportee
I-387	Report of Detainees Missing Property
I-271	Request of Canadian Deportee to be Furnished Transportation and Subsistence to a Place Other Than His Last Permanent Residence
I-270	Request for Authorization to Deport to Canada
G-710	Request for Medical or Dental Treatment for Detainee and Record of Dispensed Medicines
I-274	Request for Return to Mexico
G-373	Request for Status of Deportation Proceedings
I-386	Request for Temporary Removal of Detainees
I-241	Request for Travel Document to Country Designated by Alien
I-619	Request for United States Passport on Behalf of Deportee's Children
I-274A	Request to Depart Voluntarily from United States
M-63	Rush - Detained at Government Expense
G-138	Signature Specimen Form
I-287	Special Care and Attention for Alien
I-287A	Special Care and Attention for Alien
I-287B	Special Care and Attention for Alien
I-217A	Supplemental Information for Chinese Travel Document
M-125	Under Docket Control At ________ (Sticker)
I-210	Voluntary Departure Notice
I-497	Voluntary Departure Notice to Dependents of Naval Enlistee
I-205	Warrant of Deportation

Chapter 1[illegible] - Correspondence

CHAPTER 26

CORRESPONDENCE

SUBJECT	REFERENCE
Attorney General Letters	Correspondence Manual 101-7
Classified Letters	Correspondence Manual 101-11
Congressional Letters	Correspondence Manual 101-5
Control	Correspondence Manual 101-1
External Letters	Correspondence Manual 101-3
FOIA Requests	Correspondence Manual 101-8
General	AM 2793.01
Informal	Correspondence Manual 101-10
Memorandums	Correspondence Manual 101-4
Privacy Act Requests	Correspondence Manual 101-9
Service Addresses	AM 2015.05
Service Location Codes	AM 2022.01
Stationery	Correspondence Manual 101-2

CHAPTER 27

FINE PROCESS

SUBJECT	FORMS	REFERENCE	PARA
Adjudication of		8 CFR 280.13-.15	
Appeal of	I-290A	8 CFR 280.13(b)	
Bills	G-251(4&5 Part)	AM 2975.01 AM 2977.01-.04	27 - 3
Carrier Liability	G-251, I-284, I-287, I-287A, I-287B, I-288		27 - 2
Civil Action		8 CFR 280.1	27 - 4
Defense Against		8 CFR 280.12	
District Director, U.S. Customs Service		8 CFR 280.15	27 - 4
Files		AM 2765.07	
Initiation of	I-79	Section 280 INA	27 - 4
Interview		8 CFR 280.12	
Lloyd's Register			27 - 4
Notice of Intention to Fine	I-79	AM 2979.01-.04 Exhibit No. 1-4	27 - 5,
Notice to Remove, Detain, Deport	I-259		27 - 2
Service of		8 CFR 103.5(a)	27 - 7

FINE PROCESS

27 - 1 General

Reference: INA 231, 233, 237, 239, 251, 254, 255, 256, 271, 273, 280, 8 CFR 280, and OI 280, Immigration Inspector's Handbook, chapter 12, appendix 12-A and 12-B

Since the Deportation Branch is usually the last to handle the administrative file when an alien has been found to be deportable, deportation officers should be alert to the possibility that a violation may have occurred which would be the basis for administrative fine proceedings. If a review of the file indicates such violation and there is no indication that fine proceedings have been instituted, the file should be routed to Travel Control with a memorandum explaining the reason.

The foregoing references contain the specific statute, regulation or instructions pertaining to administrative fines. Of these, only five (Sections 237, 254, 256, 271, and 273) are likely to be useful to the deportation officer, as mentioned in the preceding paragraph. However, a review of all the reference material may be helpful and enable you to more competently perform those duties associated with primary inspection.

27 - 2 Carrier Liability

Reference: Section 232, 233(b), 237(a), 243(c), 252(b), 254(c) of INA; 8 CFR 237.3-.5, 243.6-.7, 252.2; OI 233.1, 243.2(e)

The vessel, airlines, or other transportation company which initially brought a specified alien ordered excluded or deported is liable for detention and deportation costs. The deportation officer is responsible for determining carrier liability when he receives and reviews the relating file. This is important because a running account must be made of all expenses incurred, including detention officer time, mileage on Government vehicles, and transportation. These are itemized on Form G-251 and retained in the file until closing.

When carrier liability derives from provisions of Sections 232, 233(b), 237(a), 252(b), or 254(c), the carrier is notified by personal service of Notice to Remove, Detain, Deport (Form G-259) together with the list of expenses on Form G-251 (4 part). If the carrier is liable under the provisions of Section 243(c) in deportation proceedings, it is notified by personal service of Form I-284 and, when deportation has been ordered, Form I-288 accompanied by Form G-251 (4 part). The alien is then delivered to the master, commanding officer, or officer in charge of the aircraft or vessel designated by the carrier. The officer will be given Forms I-287, I-287A, and I-287B and instructed in their use.

The deportation officer can often expedite this notification procedure by contacting the carrier by telephone of its potential liability. The resulting savings in detention costs are mutually beneficial to the carrier and the Service. However, it is important, that formal notification by personal service still be effected.

27 - 3 Preparation of Bill Prior to Initiation of Fine Proceedings (Form G-251, 4 Part)

Reference: AM 2975.01, 2977.01-.04

Form G-251 (4 part) itemizes carrier liability expenses and is prepared for Service collection and accounting procedures. These actions are maintained by the Regional Finance Section but preparation of the bill is the responsibility of the deportation officer.

Each bill is numbered consecutively beginning with number one, each fiscal year. The number is prefixed by the alphabetical location code of the billing office and the last two digits of the fiscal year, e.g., HAR-80-1, HAR-80-2, etc. A system of assigning and recording the numbers, to avoid duplication is maintained by the administrative officer of each district. Smaller districts not having an administrative officer, often assign this function to the Travel Control Section.

The bill is usually addressed to the agent for the carrier. Additional copies of the bill should be provided, if requested.

27 - 4 Initiation of Fine Proceedings -- Preliminary Review

Reference: Sections 237(b), 243(e), 254(c), 280 of INA

If the carrier is recalcitrant in paying the detention and deportation expenses properly billed under the provisions of the INA, the Regional Finance Section will request the district which arranged the subject's deportation to institute fine proceedings under the respective provisions of Sections 237(b), 243(e), or 254(c) of the Act.

Remember that the initial bill for the expenses is usually served only on the carrier's agent. The Notice of Intention to Fine (Form I-79) is served on the master, commanding officer purser, person in charge agent, owner, consignee, and/or (depending on the specific provisions of the respective section) charterer. Because the fine proceedings are usually initiated long after the vessel or aircraft's departure, it is often difficult to ascertain the name and address of all liable parties. The deportee's Arrival Departure Record (Form I-94) or Crewman Landing Permit (Form I-95) is evidence of the carrier's identity. Airlines usually provide staff that act as agents. When the deportee arrived by sea the vessel's arrival manifest (Form I-418) should be checked for the name of agent and possibly the owner. Also, a current Lloyd's Register, often found in the Travel Control Inspection Unit or Investigations Area Control Unit, contains the names of vessels engaged in international maritime trade, their owners, and office addresses. The Notice of Intention to Fine should be served on as many liable parties as possible.

Fines instituted under Section 254(c) are for deportation expenses only. Those instituted under Section 237(b) total $300 for each alien concerned in the violation and the fines imposed are added to and not in lieu of the original expenses liable to the carrier. Neither fine can be remitted or refunded. Increasing the original bill by imposing an additional fine admittedly serves as little incentive to recover those expenses. However, both fine provisions are coupled with Service authority, through the District Director of the U.S. Customs Service, to withhold the vessel's or aircraft's clearance pending payment of the fine or posting of a bond sufficient to cover the amount of the fine. Also as specified in 8 CFR 280.1 of the Act, notwithstanding the institution of fine proceeding, the fine and expenses can be recovered in a civil suit against the carrier in U.S. District Court.

27 - 5 Notice of Intention to Fine (Form I-79)

Reference: **Section 280 INA, 8 CFR 280.1, AM 2979.01-.05, AM 2979 Exhibit No. 1-4.**

Preparation and service of Form I-79 formally institutes a fine proceeding. It complies with the notice requirements of the regulations and informs the responsible party of his rights. The notice must be served as soon as possible to increase the likelihood that either the fine is paid or a bond is posted to guarantee payment prior to the District Director of Customs granting of the vessel or aircraft's departure clearance. Also it allows the carrier time to obtain evidence or otherwise prepare a defense.

One Form I-79 should be used, and only one fine file opened, for all violations which occurred on the same arrival or departure of the carrier. This is to say that even if several aliens were involved in the violation, the fine proceeding, as much as possible shall be contained in one fine file and only one I-79 shall be served.

27 - 6 Preparation of Form I-79

Reference: Form I-79

The "Fine No." space is used to identify the individual proceedings being instituted under the same fine file in connection with the same arrival or departure of a vessel or aircraft (1, 2, 3, etc.). The numeral "1" should be used if only one proceeding is involved. In the parenthesis on the same line the bill number is inserted. The "File No." is the number of the fine file opened for the case.

The person or firm on whom the notice will be served is named on the "To" line, with his relationship to the vessel or aircraft shown on the line immediately thereunder (e.g. Agent, Owner, etc.). If more than one party is to be named, the statement "and (number) others listed on attached page" should be added to the name used on Form I-79. A supplemental sheet should then be prepared to list the "others" referred to, such sheet to be identified as a supplement to the relating Form I-79.

The names of all passengers or crewmen involved in the violation are to be shown in the space provided for "Person or Persons Involved." A separate sheet may be used if more space is required in which case, "See Attachment" should be inserted.

The section or subsection of law which provides a fine for the violation must be correctly shown in the space specified for that purpose in the text of Form I-79. For example, the penalty for a violation of Section 243(e) is provided in Section 237(b).

The grounds for the fine shall be briefly but clearly stated and expressed in terms which show how the statute was violated. In addition, the circumstances under which the apparent violation occurred shall be spelled out in as much detail as possible, consistent with the timely serving of the Notice of Intention to Fine.

The amount of the fine to be inserted in the notice is the full amount specified in the section of law involved. Any pertinent reimbursable items are added into the amount.

Each Form I-79 to be served on a firm or individual, and the duplicate copy, shall be signed by the responsible Service officer. The remaining items on Form I-79 are self explanatory.

27 - 7 Service of Notice of Intention to Fine

Reference: 8 CFR 103.5a

It is essential that the I-79 is served, as specified in the relating section of law, on the proper person or persons. Particular effort should be made to serve the agent, if he is among those liable, as he is the one who is usually available to receive service and pay the fine.

Certified mail (with return receipt requested) accomplishes the same purpose as personal delivery and is the preferred method of service of Form I-79. However, if the master of a vessel is to be served, personal service should be utilized to insure delivery while the master is still in the United States. The triplicate copy of the form must be sent to the District Director of Customs at the same time, usually by regular mail, so that clearance is withheld until a deposit or bond is posted. When there is reason to believe departure of the vessel or aircraft is imminent, the notice may be delivered personally to the District Director's office, or an arrangement may be made with him to accept telephonic notice in emergent cases pending his receipt of the triplicate copy of Form I-79. The adjudicator should be aware that many carriers maintain a continuing (or term) bond with the District Director of Customs on Form I-310 (Bond for payment of Sums and Fines Imposed under Immigration and Nationality Act) so that institution of fine proceedings will not delay departure of their vessels or planes. Responsibility for accepting a bond rests entirely with the District Director of Customs.

When proceeding against more than one party, and the notice is being served by personal delivery, acknowledgment of service may be made on the supplemental sheet attached to the "duplicate" and "triplicate" copies of Form I-79, with respect to those named on the supplement. In serving a notice on a firm by personal delivery, care should be exercised to assure that the individual who acknowledges service has authority to act for the firm in such matters.

Translators

CHAPTER 28

INTERPRETERS/TRANSLATORS

In addition to the languages listed in OI 103.2(b), NYC now has the capability to translate Korean, Japanese, and Romanian.

As NYC is the only translation center in the Service, they often are overburdened with work. Accordingly, common sense should apply in seeking a translator. I.e., if you have an ample number of individuals who are fluent in Spanish in your own office, do not request a Spanish translation from NYC.

The phone number of the NYC translation unit is 264-5837 (FTS).

If NYC is unable to translate a particular language, consult OI 103.2(b) for further instructions.

Form G-46 should be utilized to request translations.

Public Relations

CHAPTER 29

LIAISON AND PUBLIC RELATIONS

Although AM 2090 gives a little guidance in the area of public relations, there is little in writing concerning the conduct of liaison.

Deportation Officers immediately see the value of liaison with foreign consulates through the savings to the Government in detention time when travel document requests are expedited. The value of liaison extends to any group or individual who deals with the Government on a regular basis. Airlines, other law enforcement agencies, and voluntary agencies are among the obvious groups where good liaison can benefit the Service.

The conduct of liaison is not as easily described as is the value of liaison. Generally speaking, the first principle of promoting liaison is courtesy. You must be courteous to promote a good Service image. Secondly, you must earn respect, never promise that which you cannot deliver. It is much better to admit that you do not have the authority to act upon a request than it is to accept the request and not be able to deliver. Often, the simple referral to the correct individual is a valuable service to an individual who has been trying to elicit some response to a request from INS.

"Favors" are an essential part of liaison. Quite often we are placed in the position of accepting "official favors" and thereby become obligated to return a favor. An "official favor" is any courtesy extended to the Service's benefit, such as expeditious handling of a travel document request or holding open seats on a regular basis on flights to Central America. The nature of the favor returned should also be official and should not be contrary to law or policy. The best example of a favor a deportation officer can provide is the expeditious handling of any requests or application. The deportation officer should not recommend the favorable or unfavorable disposition of any request or application in order to return a favor.

The M-68 deals with the acceptance of personal favors under a paragraph titled "Acceptance of Gratuities."

CHAPTER 30

FIREARMS

SUBJECT	FORMS	REFERENCE	PARA
Aerosol Tearing Devices			30 - 2
Cleaning		*Det/Off. Handbook Ch. 5 - 6	
General			30 - 1
Inspection		AM 2820.10.01	
Issuance of Ammunition	G-484	AM 2820.11	
Issuance of Sidearms	G-571	AM 2820.07	
Personally-owned Sidearms		AM 2820.12	
Qualification		AM 2820.07 AM 2820.09(b)	
Repairs		AM 2820.11, AM 2824.06 *Det/Off. Handbook Ch. 5 - 6	
Reporting Incidents		*Det/Off. Handbook Ch. 5 - 13	
Safety		*Det/Off. Handbook Ch. 5 - 2	
Training		AM 2820.07 *Det/Off. Handbook CH. 5 - 4	

*Detention Officer's Handbook

FIREARMS

30 - 1 General

Reference: AM 2820.07, Detention Officer's Handbook Ch. 5 - 11, Investigator's Handbook Ch. 3 - 7, 8, OI 287.15

Deportation officers are authorized to wear a sidearm, at their own option, while assigned to immigrant inspector duties at land border ports and seaports. Additionally, deportation officers are generally authorized to carry a sidearm while performing escort duties. However, no officer shall wear a firearm unless he qualifies initially and continues to qualify quarterly on the appropriate course.

Officers performing inspectional duties at airports are excluded from this authority.

30 - 2 Aerosol Tearing Devices: Mark II Tear Gas Projector and Mark IV Chemical Mace.

As a general rule it is intended that these devices be used for defensive purposes where resort to the use of a firearm is not immediately necessary. They are intended for bringing under control unarmed subjects who are physically opposing apprehension or threatening to use a weapon from which deportation officers can reasonably avoid injury in the event the chemical proves ineffective. Deportation officers should never rely on these devices to subdue assailants armed with a potentially lethel weapon.

Both devices contain chemicals which immediately react on the oily-fatty elements of the skin and attach the sensitive nerve endings in the impact area causing a stinging sensation. At the same time, vaporizing of the tear gas element takes place and results in intense tearing of the eyes. One or two one-second blasts from either of these devices directed at the subject's chest are almost instantly effective and the condition should continue for approximately 15 to 30 minutes. They should not be discharged at a person's face at a distance of less than two feet. As soon as possible after discharge the exposed areas of the subject should be flushed with clear water. Do not apply oil or grease medications such as butter, cold cream, lanolin, vasoline, lotions or salves which could further trap the irritant causing skin blisters. Do not bandage exposed areas, keep exposed to fresh air. An individual sprayed with Mace must be examined as soon as possible after the incident by a physician if (1) Mace is sprayed in the eyes of any person; (2) there is any indication of possible injury; or (3) if injury is claimed. A written report must be obtained from the examining physician setting forth his findings as a result of his examination, and this report shall be maintained in the appropriate Service file for future use or reference. A copy of the physician's report should accompany the report of the use of Mace.

These devices shall not be issued to Deportation Officers unless they have been adequately trained in their use. Issuance to Deportation Officers should be limited to those working cases where physical resistance may be encountered and to those working in high-crime-rate neighborhoods where bystanders might attempt to interfere with an arrest. If a Deportation Officer is assigned to duties which he feels meet these criteria and he regards it necessary to carry one of these devices, he should notify his appropriate supervisory officer and obtain authority to carry one of these devices on that particular assignment. Issuance of the devices should be made, when needed, on a temporary charge-out basis, by serial number, and accurate records maintained of each issuance and return including the Deportation Officer's signature acknowledging each receipt and relinquishment of the device. Caution shall be exercised to insure that these devices do not fall into the hands of unauthorized persons. Where they are carried in vehicles, the vehicles shall be locked when not occupied. They shall not be carried while off duty except in situations where it is absolutely unavoidable.

These devices are not permitted on board passenger aircraft. Service employees shall not carry such devices on commercial airlines either on their person or in checked baggage.

Assignments

CHAPTER 31

OVERTIME ASSIGNMENTS

SUBJECT	FORMS	REFERENCE	PARA
Authorization		AM 2825.01(2)(A)	31 - 1
Overtime Defined		AM 2825.01(2)(A) DOJ 1551.4A dated 8/1/75	31 - 2
Compensation	DOJ-296	AM 2951.01-08	31.- 3

OVERTIME ASSIGNMENTS

31 - 1 Deportation Officers are frequently called upon to perform overtime duties. Those duties involving detention and deportation activities are compensable under the Federal Employees' Pay Act of 1945, AM 2825.01(2)(A). Assignments to such overtime duties must be approved by a supervisor authorized to do so. Such a supervisor will be identified locally.

31 - 2 Typical types of overtime details performed by Deportation Officers usually involve some aspect of the detention activity. Performing escort duties or after-hour bond activity are the most frequent. Overtime performed while enroute to or from a training assignment (i.e., FLETC) or for other meetings, etc., is not compensable unless specifically authorized.

Although the Deportation Officer series (GS-301) is not covered under the provisions of 5 USC 5545(c)(2), nevertheless, possible individual coverage may be granted. (See AM 2959.03(7)).

Other overtime duties not specifically related to detention and deportation are not covered here.

31 - 3 Overtime assignments are reported on the Time and Attendance Report, DOJ-296, in accordance with applicable instructions.

Chapter 32 -- Government Property

CHAPTER 32

GOVERNMENT PROPERTY

INDEX

SUBJECT	FORMS	REFERENCE	PARA
Acquisition			32-2
Damaged			32-4
General			32-1
Lost			32-4
Misuses			32-3
Security			32-5
Stolen			32-4

GOVERNMENT PROPERTY

32 - 1 General

Reference: AM 2425.01

Government property permanently assigned to an employee is logged on G-570. Property used commonly by the section or a group within the section is best controlled by a method locally designed to insure that adequate supplies are available and in satisfactory condition.

32 - 2 Acquisition and Use

Reference: AM 2430.10, 2427.07, 2426.01, 2425.01, 2482

Property is acquired by issuance, requisition, or local purchase. It may be property that is assigned and accounted for at the district level or its use may be limited to within the section. Accountability would be determined accordingly. In the case of a vehicle assigned to the section, it would be deportation's responsibility to maintain maintenance schedules and required reports, unless district policy dictated otherwise.

Personnel should be aware of the limits on the use of gasoline credit cards and purchases made with personal funds for reimbursement.

The responsible use of property is expected of each employee and it should be used only within the limits of its design. Use of equipment that is in need of repair or is otherwise unreliable is to be avoided, whether it be automobiles or a pair of handcuffs. Defects in equipment must be reported when recognized in order that they are not reused until they are repaired and functional.

32 - 3 Misuse

Reference: OI 287.10(a), AM 2426.01, 2427.01

Government property may not be used for personal use. The misuse of Government property is a serious offense and any violation must be reported to management. Supervisors must be certain that all employees are aware of their responsibilities under the Service Professional Integrity Program.

32 - 4 Lost, Stolen, or Damaged Property

Reference: AM 2426.01, 2480

Lost or damaged property must be immediately reported to a supervisor, followed by a written report of the incident or problem. In certain cases, the Service is required to forward a report to the FBI. In some cases i.e., a vehicle accident, you are required to notify the local police authority. In other cases it may be advisable to immediately report a loss to local law enforcement agencies for assistance in recovering the item.

32 - 5 Security

Reference: AM 2482.03, 2798.11, 2798.69

Locked cabinets must be provided for: Docket Cards, I-640's, Service Lookout Books, Firearms, Handcuffs, and other restraining tools. Access to these cabinets is limited to the District Director, Deputy District Director, and Deportation Personnel. It should be further restricted to personnel with an actual need for the equipment. "Need" will be determined at the local level. Property held for detained aliens must also be kept in a secured area with access as limited above. Janitorial services in secured area must be under observation of designated section personnel or the alien's valuables removed from the storage area during cleaning periods.

/Injury/Escape of Detainee

CHAPTER 33

DEATH/SICKNESS/INJURY/ESCAPE OF DETAINEES

INDEX

SUBJECT	FORMS	REFERENCE	PARA
Death		AM 2747.03	33-1
Escape		AM 2798.96; OI 242.6(d)	33-2
Sickness/Injury	I-114	OI 243.2(b)(c); AM 2802	33-3
Sick Call	G-710		33-4
Suicide			33-6
Reports	G-348		33-5

DEATH/SICKNESS/INJURY/ESCAPE OF DETAINEES

33 - 1 Death

Reference: AM 2747.03

When death of an alien occurs while in Service custody, his next of kin in this country, and the appropriate foreign consul must be notified immediately. Also, it needs to be ascertained if the immediate relative(s) wish to claim the remains.

If a doctor is not present at the time of death, the coroner must be summoned. If there is any possibility of foul play, the FBI should be notified immediately, as they will have jurisdiction.

Whenever an alien dies while in Service custody, written statements must be obtained from all Service personnel, doctors, hospitals, and/or coroner, who have any knowledge of the death. Regional Office Deportation should be notified as soon as possible.

33 - 2 Escape

Reference: AM 2798.96, OI 242.6(d)

The escape or attempted escape of an alien from Service custody or from a non-Service facility shall be reported immediately by telephone and telegram to the Associate Regional Commissioner, Enforcement. A copy of the telegram is to be furnished to the Assistant Commissioner, Detention and Deportation. In all cases, and as soon as possible, detailed reports of the incident are to be expeditiously forwarded to the Associate Regional Commissioner, Enforcement, and the Assistant Commissioner, Detention and Deportation. In addition, the escape, or attempted escape, of a person from Service custody after arrest or conviction for a criminal violation, whether felony or misdemeanor and/or prior to completion of his sentence (e.g., where he is paroled for deportation), shall be promptly reported to the nearest office of the U.S. Marshall within one hour after the discovery of the escape, or attempted escape, and a detailed report submitted to the Regional Commissioner within 48 hours.

33 - 3 Sickness/Injury

Reference: OI 243.2(b)(c)

Any person, when detained, may be treated and cared for by the U.S. Public Health Service at the request of the Service. The Service shall reimburse the Surgeon General for the care and treatment of persons detained in Public Health Service hospitals at our request. Form I-114 (Hospital Designation or Request for Medical Service) will be used to refer detained aliens for hospitalization, treatment, and examination. Item 1 on this form should be checked if this is to be in-patient care. This will be provided at the reciprocal per diem rate and may include all necessary medical services, prostheses required as part of treatment during hospitalization, contract services such as X-ray, attending specialist services, and dental services when required as adjunct to medical treatment. Progress reports will be furnished only upon request. He will be notified when the alien is ready for discharge. Although not responsible for care or treatment at non-Government hospitals, USPHS outpatient medical officers will cooperate in arranging for treatment of our aliens at non-Service hospitals. Outpatient treatment is available at USPHS hospitals and clinics at the established outpatient rate. Contract services, such as X-rays, may be provided only upon the express authorization of the Service.

When detained, if an alien appears to be ill or has an injury which will require hospitalization and considerable expense, every attempt needs to be made to expedite his case if he is able to travel. If this is not possible, the Supervisory Detention and Deportation Officer should be consulted regarding the advisability of requesting the District Director to release the alien on an Order of Recognizance or Order of Supervision, rather than invite problems or incur additional expense to the Service.

In addition to the actual cost of hospitalization and treatment, there are various risks and costs involved in the transportation to and from the hospital, and often assignment of officers to guard the room 24 hours a day is required.

Purchase orders may be issued for hospitalization and medical needs of detainees when necessary. In isolated cases, distant from headquarters, officers may make payment in cash claim reimbursement, supported by receipt, from the imprest fund or on their expense vouchers. Otherwise, the regional office should be billed for this service.

33 - 4 Sick Call and Medical Treatment

Reference: AM 2798.74, DO Handbook 13-3

Whenever possible, aliens placed in detention shall be given a medical examination by a designated physician prior to admission. The detention facility shall afford all aliens an opportunity to report at "sick call" each day. In case of serious illness or emergency, the alien shall be sent to a hospital without delay.

Upon admission, any alien who is or is suspected of being mentally ill shall be medically examined at once. The instructions of the physician shall be followed as to further detention and treatment. Aliens in this category shall not be assigned quarters with other aliens. Aliens with a contageous disease shall be sent to the hospital at once and not permitted contact with other aliens. If an alien is suspected of being so afflicted, he shall be placed in isolation until examined.

In cases where an alien shows evidence of illness or injury or requests medical attention, he shall be given prompt medical attention. A Form G-710, Request for Medical or Dental Treatment for Detainee, and Record of Dispensed Medications, shall be filled out and an accurate record of medications dispensed kept on reverse of the forms. The Form G-710 should be included in the alien's "A" file upon the alien's departure. Aliens shall be afforded dental treatment in case of emergency or where there is evidence of a contageous disease of the mouth.

If it appears that an alien has an illness or injury not due to any cause present while detained, which will require hospitalization and considerable expense, every attempt shall be made to expedite his case if he is able to travel. If this is not possible, the Supervisory Detention and Deportation Officer should be consulted regarding the advisability of requesting the District Director to release the alien on an Order of Recognizance or Order of Supervision, rather than invite problems or incur additional expense to the Service. In addition to the actual cost of hospitalization and treatment, there are various risks and costs involved in the transportation to and from the hospital and often assignment of officers to guard the patient 24 hours a day.

33 - 5 Death Reports

Reference: AM 2747.03

Death reports, Form G-348 or prints, are received in the Central Office from the state offices of vital statistics in cases where it appears that the subject of the report is an alien. Other reports are received in the Central Office and field offices such as letters from hospitals, relatives of deceased aliens, and others.

Upon receipt in the Central Office, the death reports are used to remove the cards relating to the subjects of the reports from the master numerical card file relating to permanent resident aliens in the United States. The death reports are then forwarded to the files control office through the Central Office, Supervisor of the Mail and Files Unit.

The files control office receiving the report shall check the index to determine if there is a relating file in the office, close the file in accordance with the instructions outlined in the section entitled "disposition of closed files" and forward a copy of the report to the Central Office, Attention: Mail Unit.

If it is determined that the relating file is not located within the files control area, or the relating file has previously been closed and forwarded to a Federal Records Center, the death report shall be conspicuously noted to that effect and forwarded to the Central Office, Attention: Mail Unit.

When a G-348 is received from the Central Office, the relating file should be closed in accordance with AM 2751.01(2). Do not send death reports to the Federal Records Center for filing in closed files. These reports should be destroyed.

33 - 6 Suicides, or Attempted Suicides

Reference: AM 2798.104 & 105, DO Handbook 10-64

Attempted Suicide:

Occasionally an alien becomes mentally deranged and may attempt to take his life. In such a case administer first aid. Place the alien in a straitjacket or straps, if necessary, and summon a physician promptly. Keep the alien under surveillance at all times. Remove him to a private room. The Supervisory Detention and Deportation Officer will, if necessity demands, make arrangements to have the alien sent to a hospital or placed in a mental institution or clinic. The Supervisory Detention and Deportation Officer shall prepare reports giving all pertinent details covering the incident. In case the alien remains at the detention facility, remove all objects from his room which might be used in a second suicidial attempt, and keep him under constant observation.

Suicide:

Do not remove the body, cover the remains and station an officer nearby. Notify the proper medical officer, the local police, and request the assistance of the coroner. The FBI shall also be notified. In case of possible foul play, the FBI has investigative jurisdiction on Federal property. The Detention Officers shall prepare a complete report on the death and, if possible, take photographs covering the situation.

Intelligence

CHAPTER 34

SECURITY AND INTELLIGENCE

SUBJECT	FORMS	REFERENCE	PARA
Accountability of Classified Material	M-3, M-51, G-87, G-352, M-1, M-1A	AM 2100.20-.22, 2792	34 - 4
Cancellation of Non-Immigrant Visas	I-275, I-213	OI 212.4(d), 212.9, 212.10 235.1(o), 236.2, 242.4, 287.9, 22 CFR 41.122(e) 41.129(f)	34 - 13
Classifications		AM 2100, Ex. 2, AM 2100.03-.06	34 - 2
Custody and Safeguarding Classified Information and Material		AM 2100,13-.15	34 - 3
Designated Security Officer Program & Inspections	G-393 Security Log	AM 2100.33-.34	
Destruction of Classified Material	G-352	AM 2100.29-.30.	34 - 6
FBI and CIA Reports		OI 105.1(b), 105.2(b)	34 - 8
General Provisions - Classifield Material		AM 2100.01	34 - 1
Intelligence Organization		OI 103.1(d)(1)	34 - 10
Intelligence Reporting - Others	G-330	OI 103.1(d)(1)	34 - 12
Intelligence Reporting - Weekly	G-392, G-643	OI 103.1(d)(1), App. 103.1(d)	34 - 11
Issuance of Security Forms	G-625	AM 2414.30-.10	34 - 9
Reporting Intelligence to Other Agencies	I-57	OI 105.6(a), 235.1(e), 287.9, 287.11	34 - 15

SUBJECT	FORMS	REFERENCE	PARA
Security and Safeguards of Systems of Records		8 CFR 103.34, 28 CFR 16.54	34 - 7
Security Forms Safeguards Procedures		AM 2414	
Sources of Service Intelligence		**OI** 287.7(b), 287.8(b)	34 - 14
Transmission of Classified Material	G-84, G-88, G-133, G-93	AM 2100.24, 2793.17, par.2e, 2793.21-.22, OI 212.10	34 - 5

SECURITY AND INTELLIGENCE

34 - 1 General Provisions - Classified Material

Reference: AM 2100.01

AM 2100 implements DOJ regulations promulgated for the protection of information classified in the interest of the National Security. The actual regulations are contained in 28 CFR 17.1 through 17.81. Other security instructions in AM 2100 relate to protection of documents covered by the Privacy Act of 1974 (5 USC 522a) and procedures for the protection of miscellaneous security items.

34 - 2 Classifications

Reference: AM 2100, Exhibit 1, AM 2100.03-.06

Only three levels of protection can be accorded documents and materials: TOP SECRET, SECRET, and CONFIDENTIAL. Employees may use the protective marking, PERSONAL AND CONFIDENTIAL, to protect certain Service documents or materials.

34 - 3 Custody and Safeguarding Classified Information and Material

Reference: AM 2105.13-.15

Uniform standards for containers and vault doors are in "Physical Security Manual for Safeguarding Classified Information" (DOJ Order 2620.4). Lock combinations must be changed at least once a year. AM 2105.01 par. 3 and AM 2105.02 par.4 and 6 contain instruction concerning lock combinations.

"Open" and "Closed" signs shall be displayed on containers (AM 2105.02 par.5).

Classified information and material shall not be removed from a Service office unless removal can be justified as valid operational need (AM 2105.03 par.8).

34 - 4 Accountability of Classified Material

Reference: AM 2100.20-.23, 2792

Top secret control officers assume custody of all top secret material in their respective jurisdictions with an 8" x 10½" ruled record book register. Material is protected by M-3, Top Secret Cover Sheet, shall be in M-51, Top Secret File Folder and shall contain Form G-87, Top Secret Signature Record. Secret and Confidential material is transmitted by Form G-352. M-1, Secret Cover Sheets and M-1A, Confidential Cover Sheets are used to protect material pending insertion in a file.

34 - 5 Transmission of Classified Material

Reference: AM 2100.24, 2793.13 par.3c, 2793.17, par.2e, 2793.21-.22; OI 212.10

Document Receipt, Form G-84, used for transmission of Top Secret and Secret material, and for Confidential when deemed necessary. "LIMITED OFFICIAL USE" designation and double envelopes/diplomatic pouch covered in AM 2100.02, AM 2793.21-.22 and OI 212.10. G-88, Top Secret Control Card, G-133, Signature Card for Classified File and G-93, Classified Envelope are used to transmit files within an office.

34 - 6 Destruction of Classified Material

Reference: AM 2100.29-.30, 2792.17 par. 11

Classified material may be destroyed upon written authorization from INS security officer in office holding the material. Record of destruction is made on disposition copy of Form G-352.

34 - 7 Security and Safeguards of Systems of Records

Reference: 8 CFR 103.34, 28 CFR 16.54

Each agency that maintains a system of records from which information is retrieved by name or other identifier of an individual shall establish safeguards to insure security and confidentiality of the records. Required by Privacy Act of 1974, Public Law 93-579.

34 - 8 FBI and CIA Reports

Reference: OI 105.1(b), 105.2(b)

Investigative reports contained in Service files originating with the FBI or CIA must be protected, may not be incorporated in records of hearings and the existence or contents of such reports shall not be disclosed to the subject or his representative.

34 - 9 Issuance of Security Forms

Reference: AM 2482.03.02-.05, 2482 Ex. 4 and Ex. 5

Blank security forms are issued when typed and are recorded on Form G-625 by serial number, name, and A file number.

34 - 10 Intelligence Organization

Reference: OI 103.1(d)(1)

Each district, interior suboffice, class A port of entry and sector has a designated Intelligence Officer who is responsible for gathering and reporting intelligence on the local level. Regional Intelligence Officers coordinate the gathering, reporting and dissemination of intelligence within the region.

34 - 11 Intelligence Reporting - Weekly

Reference: OI 103.1(d)(1), App. 103.1(d)

The local office Intelligence Officer will compile a weekly Intelligence Report on Form G-392. The original will be sent to COINT with copies to ROINT, concerned Asst. Regional Commissioners and El Paso Intelligence Center. All branches and units within the local office shall furnish the Intelligence Officer with intelligence to be included in the report by use of Form G-643. Weekly intelligence reports will be published by each Regional Intelligence Officer.

34 - 12 Intelligence Reporting - Other

Reference: OI 103.1(d)(1)

Intelligence gathered at the local office level, that needs dissemination to other offices, shall be handled in the most expeditious manner, commensurate with the urgency of the information, i.e., by telephone, telegram, memo, etc. For routine passing of non-urgent information directly to the officer who can best use it, Form G-330, Notice of Action Information Card, may be used. When the information is acted upon the receiving officer shall note the G-330 and return it to the sender.

34 - 13 Cancellation of Non-Immigrant Visas

Reference: OI 212.4(d), 212.9, 212.10, 235.1(o), 236.2, 242.4, 287.9, 22 CFR 41.122(e), 41.129(f)

Generally speaking, it is the responsibility of the Deportation Branch to cancel a non-immigrant visa contained in the passport of an alien for whom an order of deportation has been entered, or for whom an alternate order has been issued. Form I-275, Notice of Withdrawal of Application for Admission to the U.S., is executed at the time the visa is cancelled and/or a 212(d)(3) or (4) waiver is revoked. The original form is sent to the particular American Consul or Embassy that issued the visa with a copy to the Regional Intelligence Officer and for the file. Copies of Forms I-213, Orders to Show Cause, Warrants of Deportation, etc., should be sent with the I-275 to give a complete picture of the alien's case. This information is of vital importance to establish visa abuse trends.

34 - 14 Sources of Service Intelligence

Reference: OI 287.7(b), 287.8(b)

Three Service intelligence centers available for use by all officers are the Canadian Border Anti-Smuggling Information Center located at Sector Headquarters in Swanton, Vermont, the Mexican Border Anti-Smuggling Information Center located at the El Paso Intelligence Center, and the Fraudulent Document Center located also at the El Paso Intelligence Center. Service officers are encouraged to make use of these facilities and to furnish pertinent intelligence to them when it is encountered.

34 - 15 Reporting Intelligence to Other Agencies

Reference: OI 105.6(a), 235.1(e), 287.9, 287.11

Any Service officer who receives information concerning threats to any of the persons that the Secret Service is charged with the responsibility of protecting shall promptly report it to that agency. A Form I-57, Notice to the FBI of Admission of Foreign Government Official to the U.S. Under the I&N Act, is completed for each alien admitted under Sec. 101(a)(15)(A) or (G). The original is sent to the FBI with a copy to the CIA. Intelligence concerning fraudulent procurement or use of U.S. passports and visas, counterfeit visas, visa irregularities, etc., shall be reported to the Department of State. Any Service officer obtaining derogatory information relating to the admissibility or character of a nonresident alien, which information could have a bearing on the Consul's decision on a visa application, shall send it to the Director Visa Office, DOS. Violations of 18 USC 2199, relating to stowaways shall be reported to the local FBI.

CHAPTER 35

NEWS MEDIA

SUBJECT	FORMS	REFERENCE	PARA
Accuracy			35 - 3
Court "Gag Rule"		AM 2798.33	35 - 5
Dealing with News Media			35 - 3
Definition of News Media		AM 2798.31	35 - 2
Deportation Hearings		INA 243, AM 2090	35 - 4
Exclusion Hearings		INA 236, 8 CFR 236.2, AM 2090	35 - 4
Interviews		AM 2798.31 Attachment I & II	35 - 5
Releasing Information		AM 2090, AM 2780, Ex. 5	35 - 3
Visits to Detention Facility		AM 2798.32 Attachment I & II	35 - 5

NEWS MEDIA

35 - 1 General

Reference: INA 236, INA 243, 8 CFR 236.2, 28 CFR 50.2

Provisions for release of information and interaction with news media representatives are policy set forth in AM 2090.01, AM 2780 Exhibit 5, AM 2798.31, AM 2830.01. Several of the sections in this chapter define and highlight these policies.

35 - 2 News Media Representative

Reference: AM 2798.31

News media representatives are people "employed in the business of gathering and reporting news" for:

a. A "general circulation" newspaper in the community.

b. News magazines with a national circulation.

c. National or international news services (wire services).

d. Radio and television stations with Federal Communication licenses.

The above categories should cover most situations. If a news media representative is encountered who does not fall into one of the above groups, approval of the Regional Commissioner must be obtained before information is released or interviews granted.

35 - 3 Release of Information

Reference: AM 2090.01-.06, AM 2780 Exhibit 5

The applicable public information policies of the Justice Department and the Immigration and Naturalization Service are fully explained in the cited references. The Freedom of Information Act and sometimes the Privacy Act will also affect the information you release to the news media. Officers should become familiar with the policy and act in order to effectively disseminate information.

In most districts the District Director, Officer in Charge, or their appointed representatives will deal with all news media requests for information and interviews. This is both necessary and desirable in order to provide accurate and timely information.

Deportation Officers will often be called upon to provide information about a specific deportation case or proceeding or a general description of the overall deportation operation. When initially dealing with news media representatives, be sure to require identification.

Accuracy is extremely important whenever you release information. Do not attempt to provide information about a case or proceeding unless you have exact and up-to-date knowledge. Remember that the information you provide, including comments and explanations, will be presented by the news media to the listening, reading, and viewing public as FACTS. Never subject yourself or the Immigration Service to possible embarrassment or repercussions by making idle comments or "speaking off the record." Remember when speaking as a Federal officer representing the U.S. Immigration and Naturalization Service, everything you say will be considered "official."

35 - 4 Hearings

Reference: INA Sec. 236, INA Sec. 243, 8 CFR 236.2, AM 2090.04

Deportation hearings are OPEN to the public, but no photographs may be taken in the hearing room. Picture taking will be permitted in hallways and other public areas.

Exclusion hearings are CLOSED to the public unless the alien makes a specific request to have the public or press attend. If an alien makes such a request, he must state for the record that he is waiving the requirement in Section 236 of the Immigration and Nationality Act for an inquiry "separate and apart from the public."

Public access to either a deportation hearing or the opening of an exclusion hearing at an alien's request is subject to several considerations. These will include:

1. The available physical facility.

2. Immigration personnel on duty.

3. Building security.

Immigration Judges and Trial Attorneys may have specific requirements, in addition to the above considerations, which must be accommodated.

35 - 5 News Media Contact with Detainees

Reference: AM 2090.05 and Exhibit 1, AM 2798.31 & Attachments I & II

Visits to a Detention Facility

News representatives who wish to visit any INS detention facility should make appointments in advance. A detention facility includes an Alien Detention Facility, Alien Staging Area, or an Alien Holdroom.

News representatives must obtain the permission of detainees before photographs are taken or voice recordings made. Releases signed by detainees for photographs, voice recordings, and identifying data should be kept on file. Reporters must sign an agreement in order to visit a facility or conduct an interview. The detainee release is attachment I and the reporter's agreement is attachment II to AM 2798.37.

Personal Interviews

In addition to tours of INS detention facilities, news representatives may conduct personal interviews with undocumented aliens while they are being held in a detention facility. Before any such interview is approved "the detainees must authorize the INS to respond to comments made in the interview and to release information to the news media relative to the detainees comments." (AM 2798.32(c)). The reporter must also sign an agreement to abide by certain rules and regulations.

Any request for a personal interview with a detainee should be made in writing to the District Director. The request may be approved or disapproved according to reasons listed in the cited reference. One important factor would be any court action which involves a detainee. In many court actions a "gag rule" may be issued. Even if the court does not actually prohibit release of information, it is wise to release only identifying data to avoid affecting the outcome of the court case.

At all times the normal operation of a detention facility and the normal processing of undocumented aliens will take precedent over news media visits or interviews. Under no circumstances will the processing or departure of a detained alien be delayed by news media visits or requests for interviews.

G-22 & G-23

CHAPTER 36

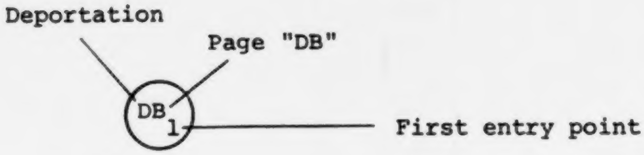
STATISTICS

Subject	Form	Reference	Para
G-22.4		AM 2301.21	
G-22.5		AM 2301.22	
G-22.6		AM 2301.23	
G-22.7		AM 2301.24	
G-23.8		AM 2301.17 and .24	
G-23.9		AM 2301.24	
G-23.10		AM 2301.24	

CHAPTER 37

REPORTS

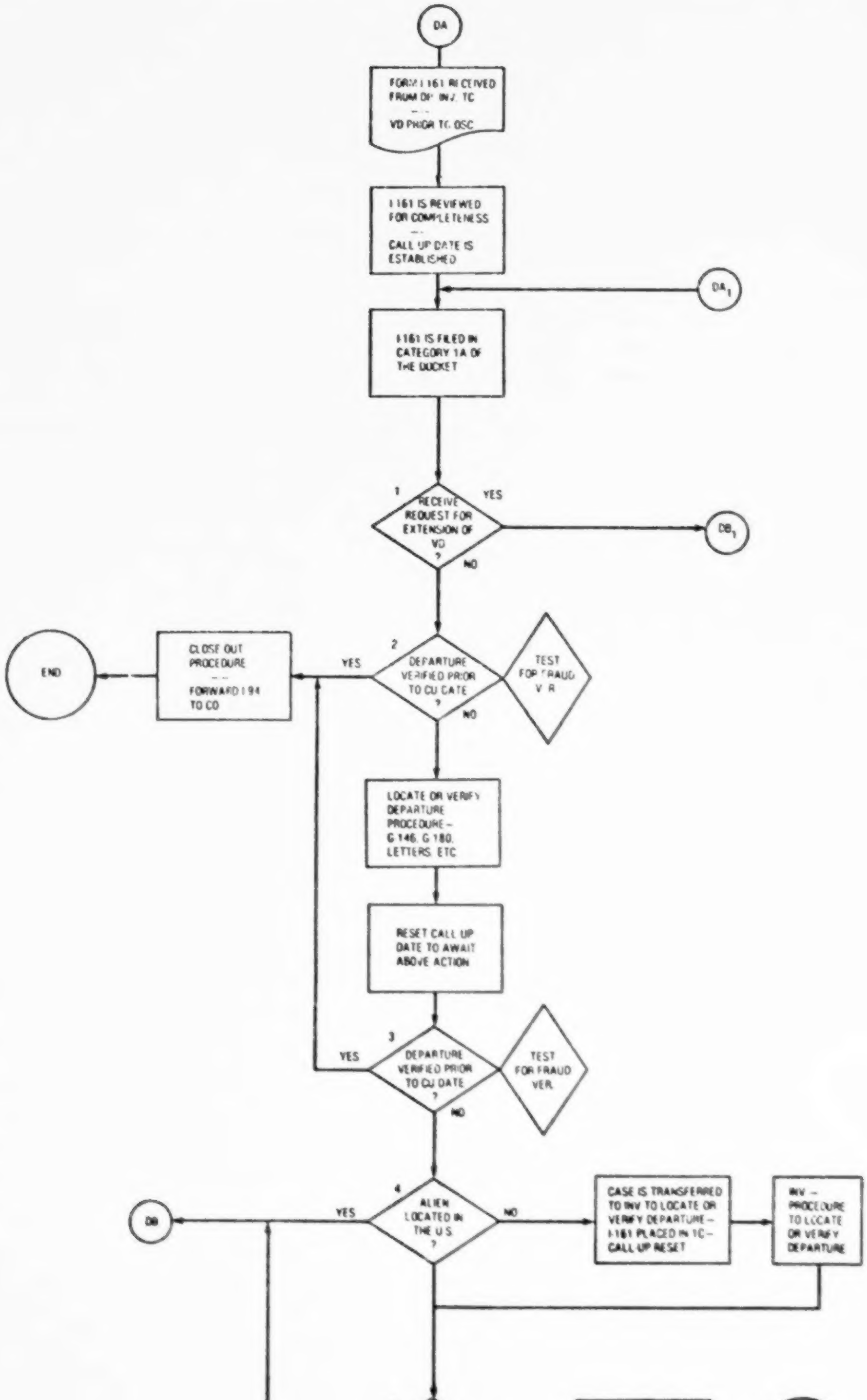
Subject	Forms	Reference	Para
Cubans under Docket Control		AM 2050.15	
D&D Activity Report		AM 2050.15, OI 103.1(h)	
D&D Facilities		AM 2050.15	
Detention Facility Activity Report		AM 2050.15	
Non-Service Detention Facility Information Card	G-324	AM 2050.15, 2798.25	
Report of Aliens Detained at Service Expense	I-249	AM 2798.12	
Report of Mental Cases Deported and Removed		AM 2798.13, AM 2050.15	
Special Report No. 2		AM 2050.15	
Transportation Analysis	G-667	AM 2050.15	



If we begin on the first page at the point labeled "DA" we see that this process begins with the receipt of Form I-161 (document symbol). The Form I-161 is reviewed and filed (process symbols). The next action to be taken is dependent upon the answer to the question, "was a request for extension of voluntary departure received?" (decision point symbol). If the answer is "yes," proceed to page "DB" to the first entry point "DB$_1$" where the request for extension of VD will be considered. If the answer is "no," then proceed to the next decision point (#2) and determine if departure was verified prior to the established call-up date.

best copy available

DEPORTATION PROCEEDINGS


DA
FORM I 161 RECEIVED FROM DI INV. TC
— —
VD PRIOR TO OSC
I 161 IS REVIEWED FOR COMPLETENESS
— —
CALL UP DATE IS ESTABLISHED
DA1
I 161 IS FILED IN CATEGORY 1A OF THE DOCKET
1
RECEIVE REQUEST FOR EXTENSION OF VD ?
YES
DB1
NO
2
DEPARTURE VERIFIED PRIOR TO CU DATE ?
TEST FOR FRAUD V R
YES
CLOSE OUT PROCEDURE
— —
FORWARD I 94 TO CO
END
NO
LOCATE OR VERIFY DEPARTURE PROCEDURE – G 146, G 180, LETTERS ETC
RESET CALL UP DATE TO AWAIT ABOVE ACTION
3
DEPARTURE VERIFIED PRIOR TO CU DATE ?
TEST FOR FRAUD VER.
YES
NO
4
ALIEN LOCATED IN THE U.S. ?
YES
DB
NO
CASE IS TRANSFERRED TO INV TO LOCATE OR VERIFY DEPARTURE – I-161 PLACED IN 1C – CALL-UP RESET
INV – PROCEDURE TO LOCATE OR VERIFY DEPARTURE
5
ALIEN LOCATED PRIOR TO CU DATE ?
YES
NO
SPECIAL CLOSE OUT PROCEDURE
END

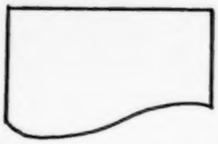
APPENDIX

FLOW CHARTS

INA - Table of Content

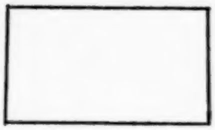
FLOW CHART SYMBOLS

Document



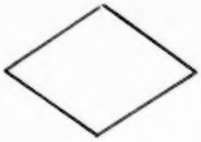
This symbol indicates the use or issuance of a document.

Process



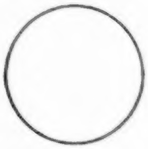
This symbol indicates a work process such as filing, typing, etc.

Decision Point



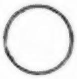
This symbol indicates the point at which a binary decision must be made. All decision points are numbered.

End Point



This symbol indicates the point where D&D terminate interest in the case.

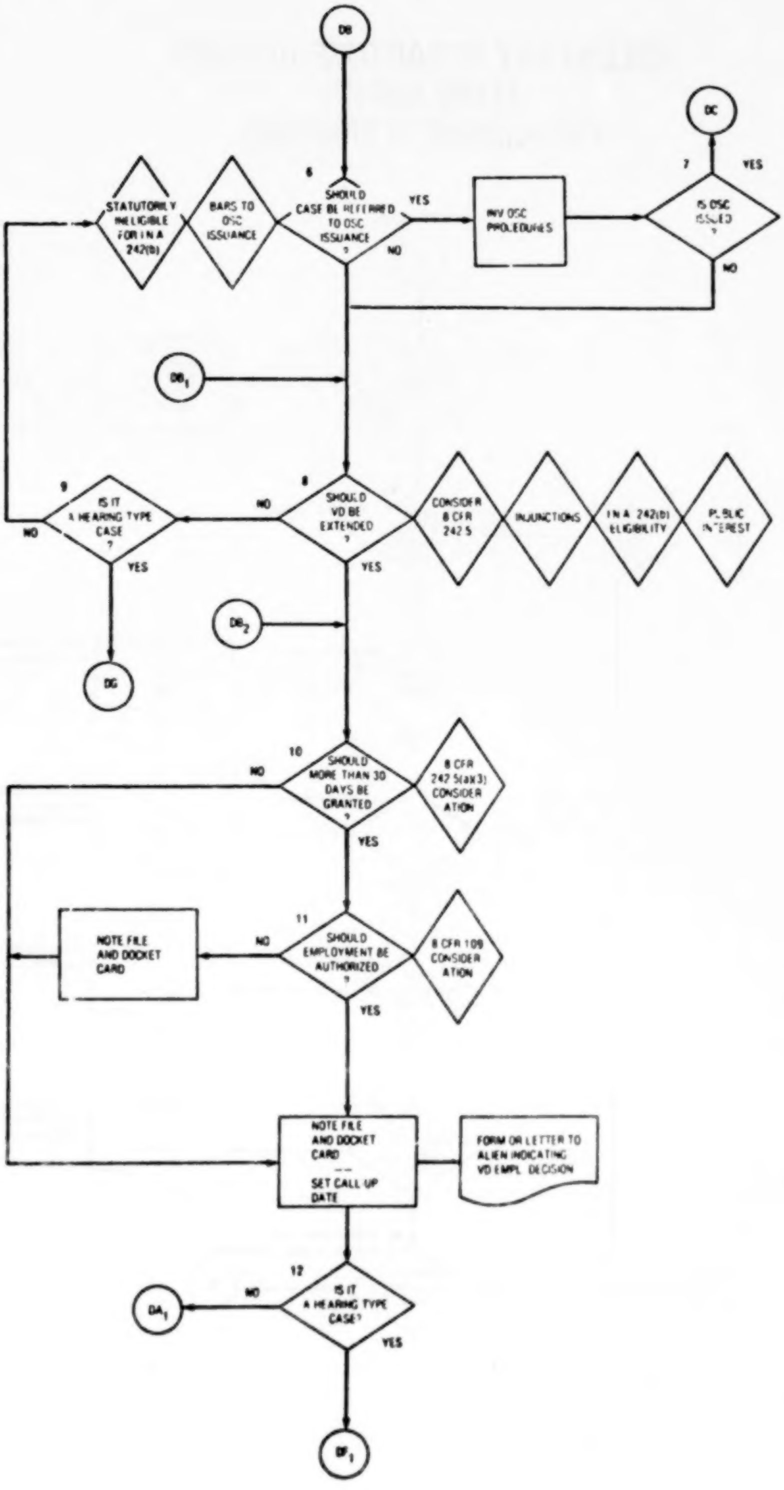
Connector



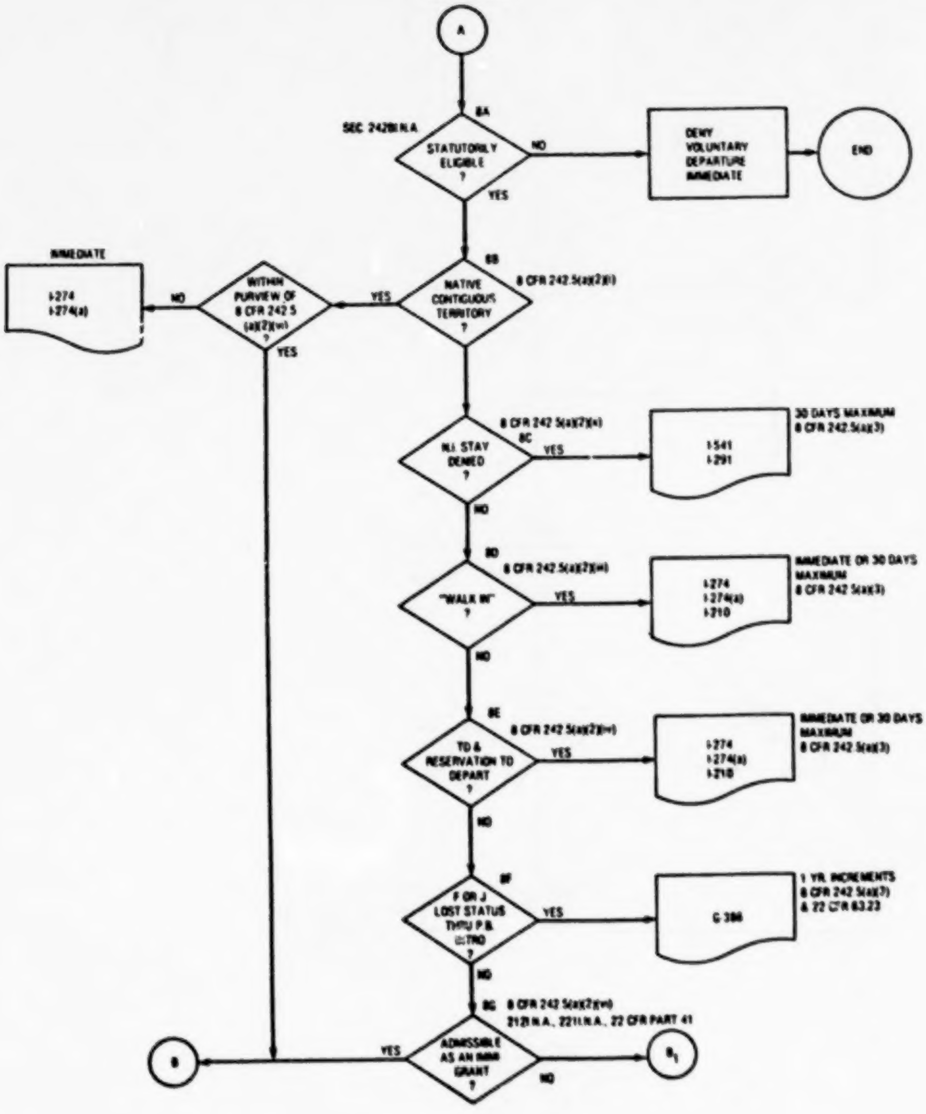
This symbol is used to connect all of the charts together. For example, if you follow the chart to a point that looks like this $\longrightarrow (DB_1)$, this means that somewhere else in the flow charts there is a corresponding point $(DB_1) \longrightarrow$ to which you should proceed in order to continue the flow.

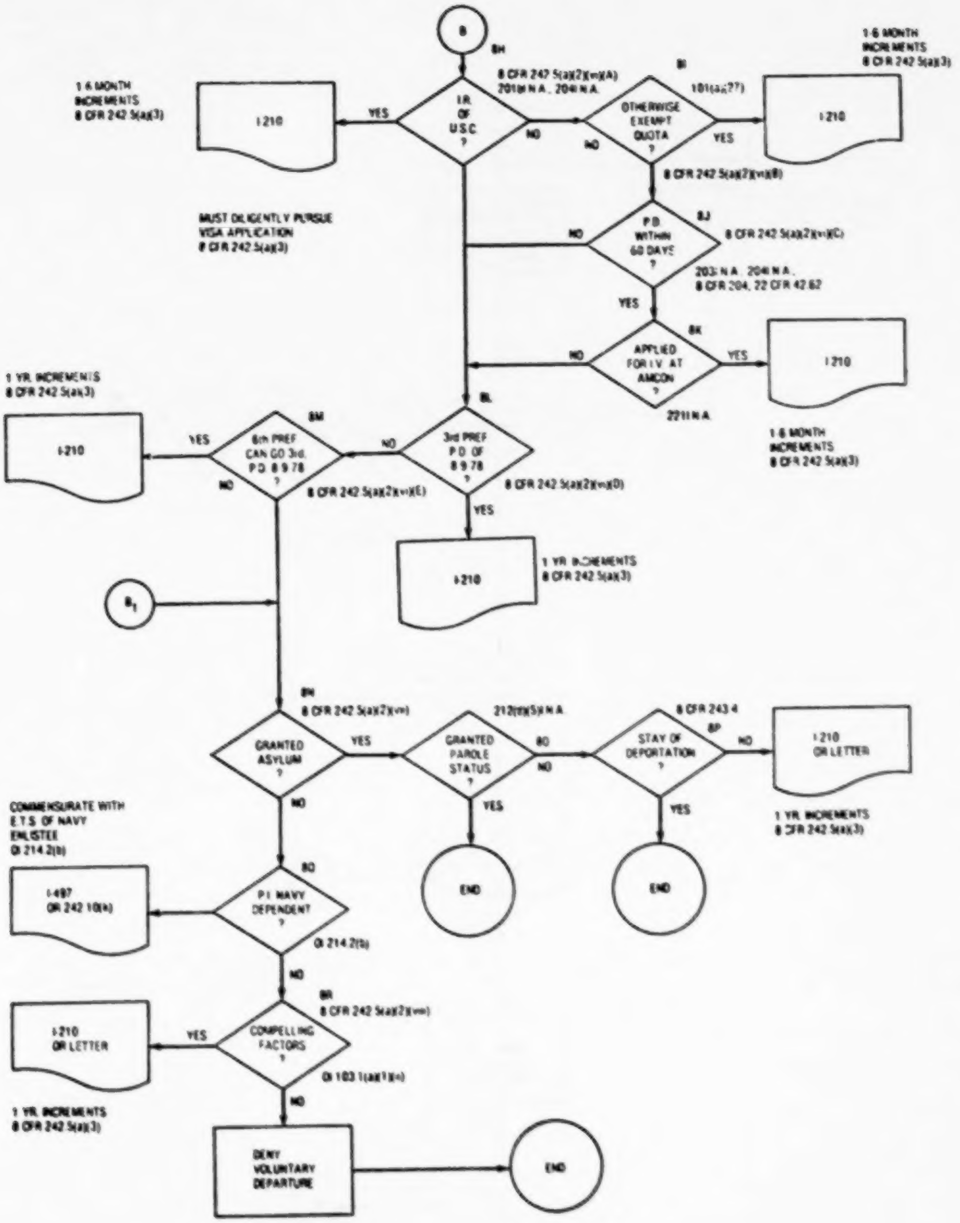
All of the Deportation flow chart connector labels begin with the letter "D" to indicate that they are Deportation flow charts (they have been integrated into a Service operational flow chart system). The second letter indicates the page; each page begins with a new letter ranging from "DA" through "DI".

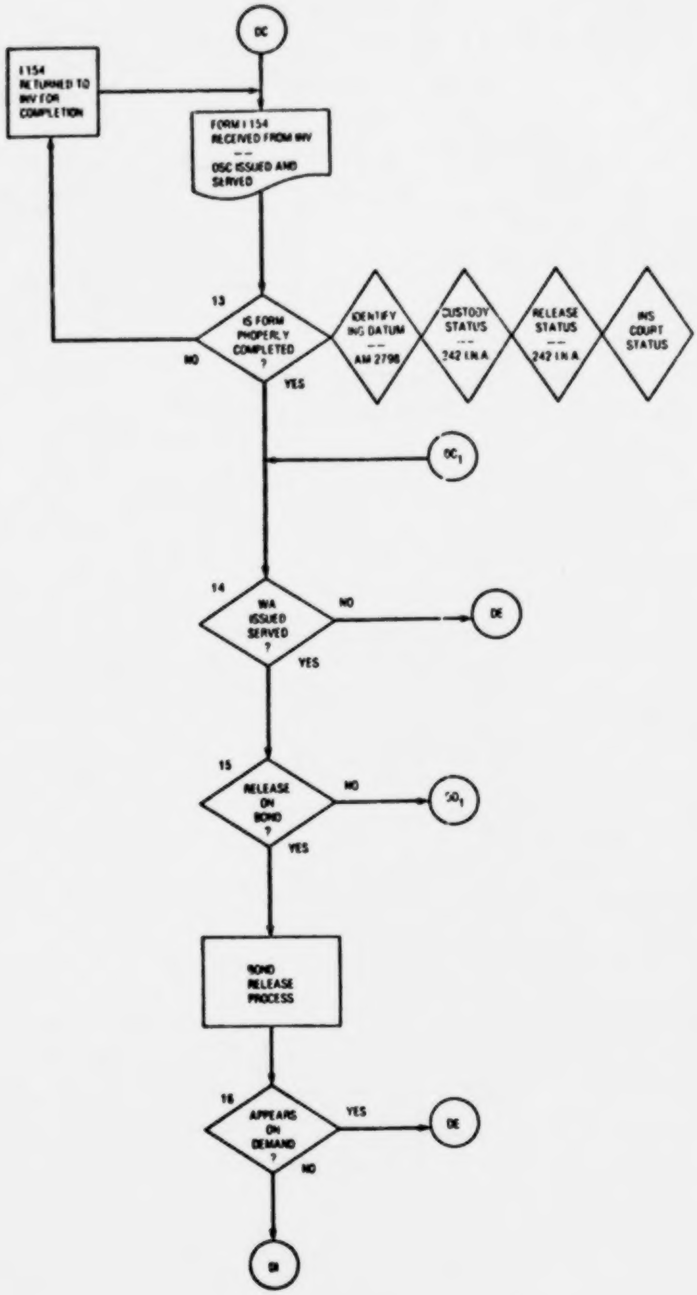
The subscript number indicates the point on the line where a connector makes an entry. In the example utilized above $\longrightarrow (DB_1)$, which is found on the first page of flow charts, this indicates that the corresponding point will be the first entry point (reading from top to bottom) on page "DB".

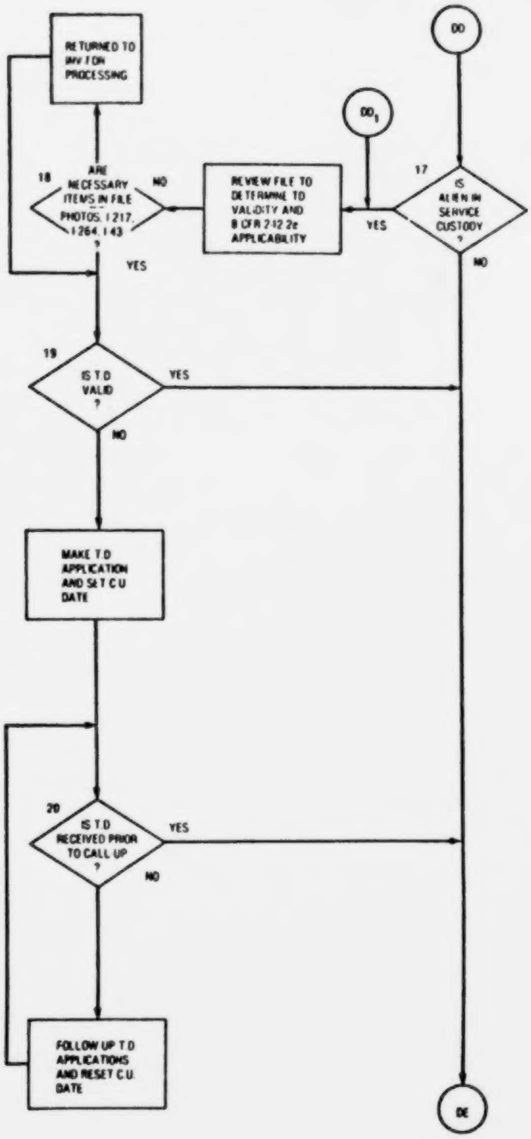

DB
DC
6
SHOULD CASE BE REFERRED TO OSC ISSUANCE ?
YES
NO
STATUTORILY INELIGIBLE FOR I N A 242(b)
BARS TO OSC ISSUANCE
INV OSC PROCEDURES
7
IS OSC ISSUED ?
YES
NO
DB1
8
SHOULD VD BE EXTENDED ?
NO
YES
CONSIDER 8 CFR 242 5
INJUNCTIONS
I N A 242(b) ELIGIBILITY
PUBLIC INTEREST
9
IS IT A HEARING TYPE CASE ?
NO
YES
DG
DB2
10
SHOULD MORE THAN 30 DAYS BE GRANTED ?
NO
YES
8 CFR 242 5(a)(3) CONSIDER ATION
11
SHOULD EMPLOYMENT BE AUTHORIZED ?
NO
YES
8 CFR 109 CONSIDER ATION
NOTE FILE AND DOCKET CARD
NOTE FILE AND DOCKET CARD — SET CALL UP DATE
FORM OR LETTER TO ALIEN INDICATING VD EMPL DECISION
12
IS IT A HEARING TYPE CASE?
NO
YES
DA1
DF1

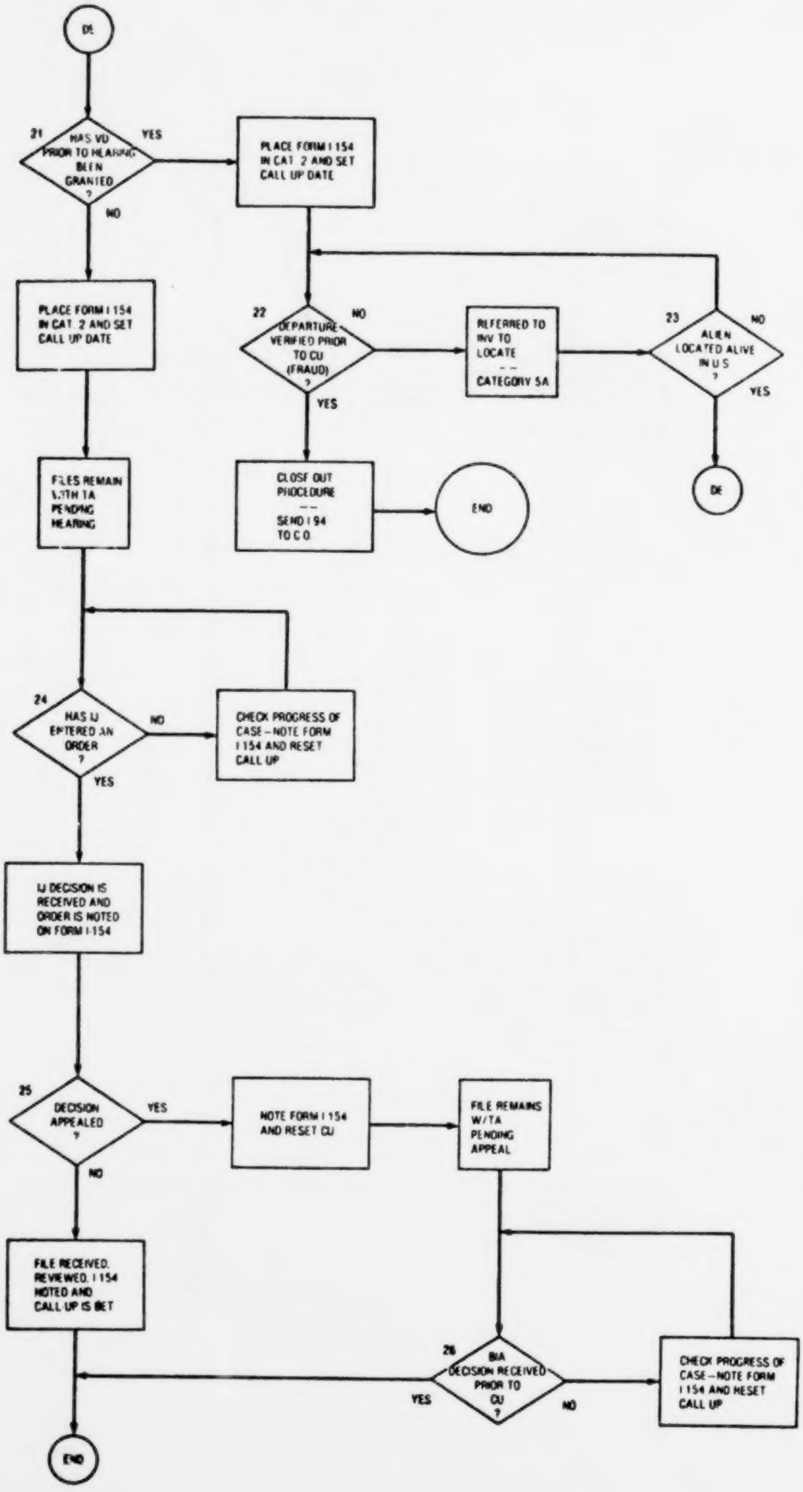
VOLUNTARY DEPARTURE DECISION FLOW CHART
(Attachment to Chart DB)

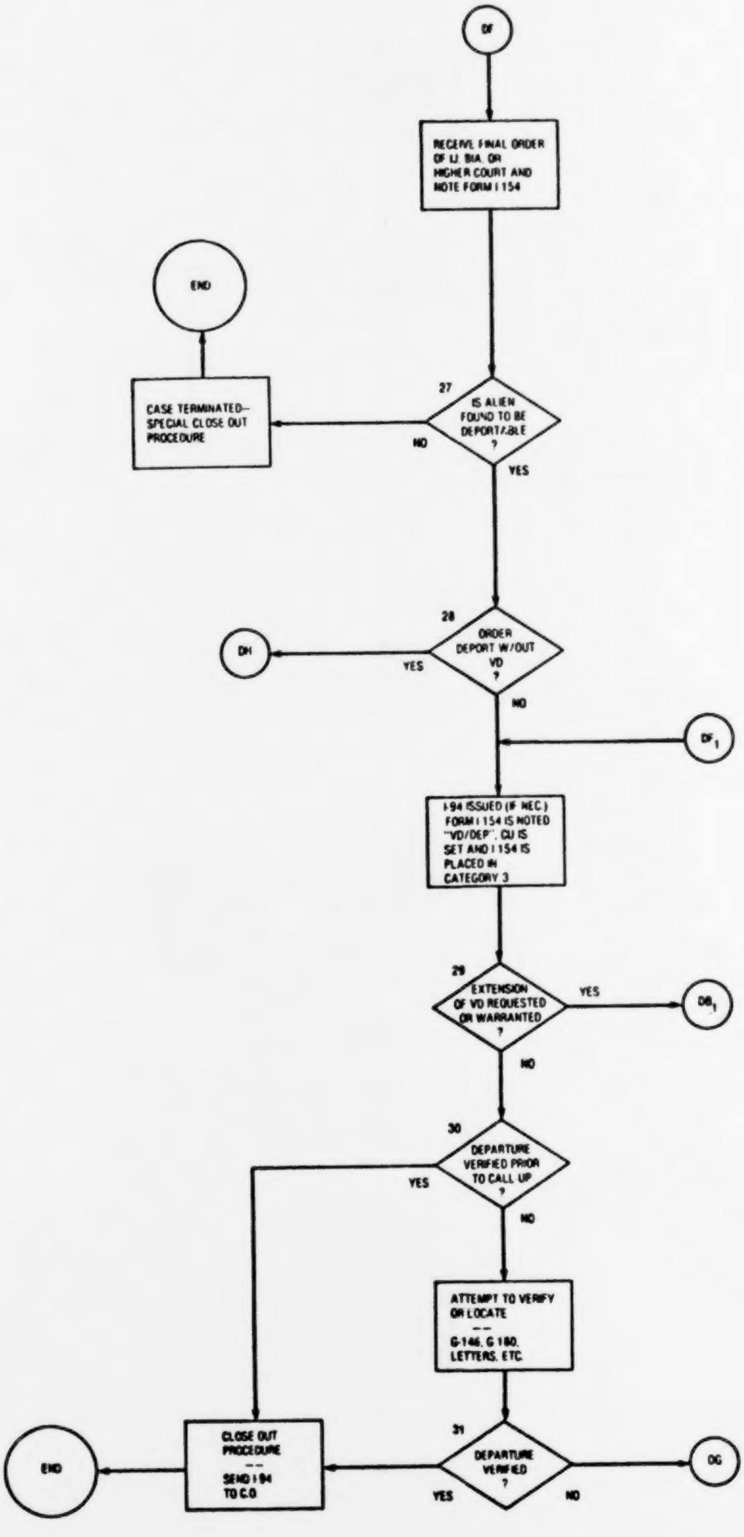

8 CFR 242.5(a)(2)
A
8A
SEC. 242(b) I.N.A.
STATUTORILY ELIGIBLE ?
NO
DENY VOLUNTARY DEPARTURE IMMEDIATE
END
YES
8B
NATIVE CONTIGUOUS TERRITORY ?
8 CFR 242.5(a)(2)(i)
YES
WITHIN PURVIEW OF 8 CFR 242.5 (a)(2)(vi) ?
NO
IMMEDIATE
I-274
I-274(a)
YES
8 CFR 242.5(a)(2)(ii)
8C
N.I. STAY DENIED ?
YES
I-541
I-291
30 DAYS MAXIMUM
8 CFR 242.5(a)(3)
NO
8D
8 CFR 242.5(a)(2)(iii)
"WALK IN" ?
YES
I-274
I-274(a)
I-210
IMMEDIATE OR 30 DAYS MAXIMUM
8 CFR 242.5(a)(3)
NO
8E
8 CFR 242.5(a)(2)(iv)
TD & RESERVATION TO DEPART ?
YES
I-274
I-274(a)
I-210
IMMEDIATE OR 30 DAYS MAXIMUM
8 CFR 242.5(a)(3)
NO
8F
F OR J LOST STATUS THRU P.B. (INTRO) ?
YES
G-386
1 YR. INCREMENTS
8 CFR 242.5(a)(7)
& 22 CFR 63.23
NO
8G
8 CFR 242.5(a)(2)(vi)
212 I.N.A., 221 I.N.A., 22 CFR PART 41
ADMISSIBLE AS AN IMMIGRANT ?
YES
B
NO
B1

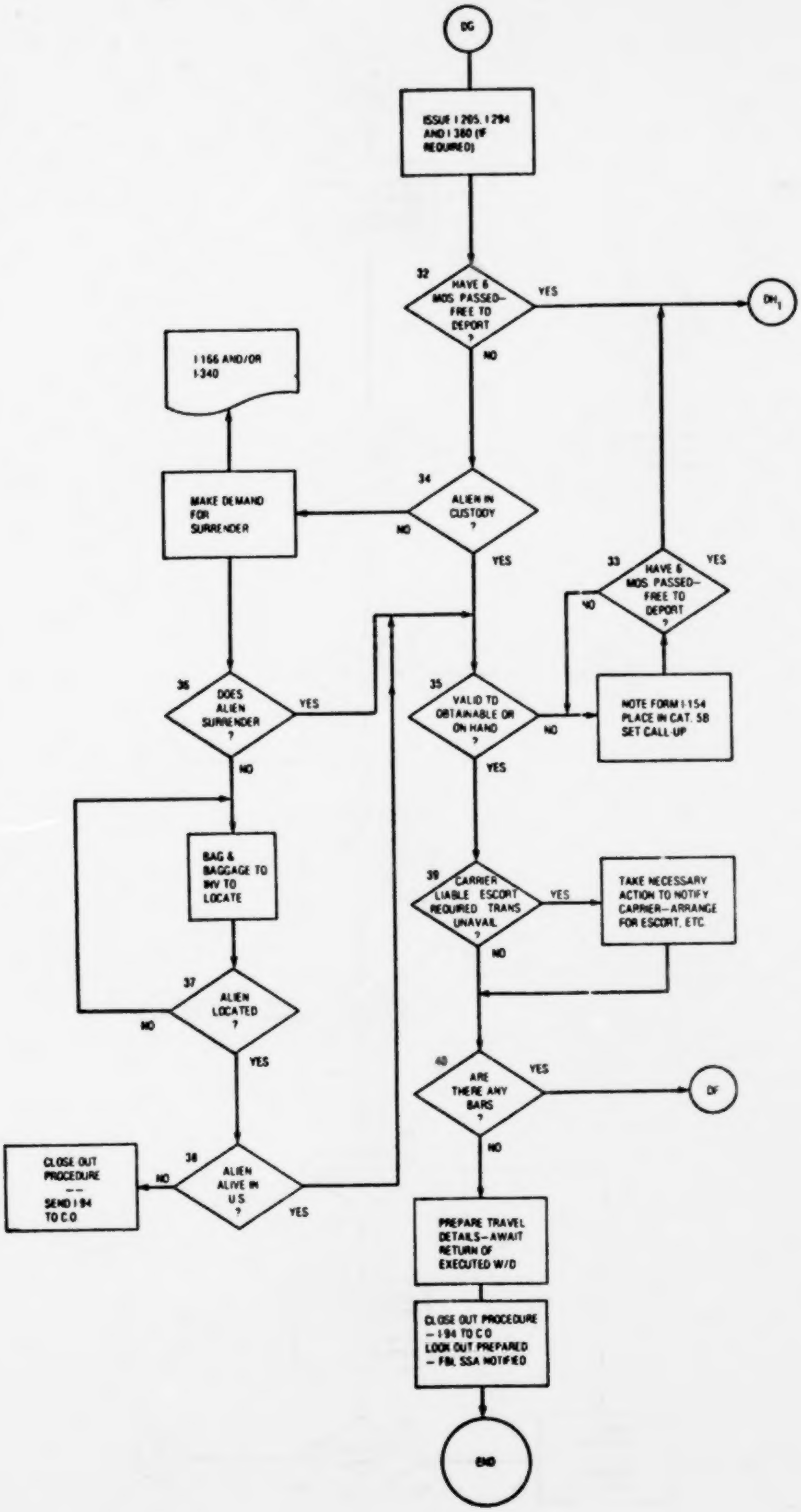

B
BH
8 CFR 242.5(a)(2)(vi)(A)
201(b) N.A., 204 N.A.
I.R. OF U.S.C. ?
YES
NO
1-6 MONTH INCREMENTS 8 CFR 242.5(a)(3)
I-210
BI
101(a)(27)
OTHERWISE EXEMPT QUOTA ?
YES
NO
1-6 MONTH INCREMENTS 8 CFR 242.5(a)(3)
I-210
8 CFR 242.5(a)(2)(vi)(B)
MUST DILIGENTLY PURSUE VISA APPLICATION 8 CFR 242.5(a)(3)
BJ
P.D. WITHIN 60 DAYS ?
8 CFR 242.5(a)(2)(vi)(C)
203 N.A., 204 N.A., 8 CFR 204, 22 CFR 42.62
NO
YES
BK
APPLIED FOR I.V. AT AMCON ?
221 N.A.
NO
YES
I-210
1-6 MONTH INCREMENTS 8 CFR 242.5(a)(3)
BL
3rd PREF P.D. OF 8.9.78 ?
8 CFR 242.5(a)(2)(vi)(D)
NO
YES
I-210
1 YR. INCREMENTS 8 CFR 242.5(a)(3)
BM
6th PREF CAN GO 3rd. P.D. 8.9.78 ?
8 CFR 242.5(a)(2)(vi)(E)
YES
NO
I-210
1 YR. INCREMENTS 8 CFR 242.5(a)(3)
B1
BN
8 CFR 242.5(a)(2)(vii)
GRANTED ASYLUM ?
YES
NO
212(d)(5) N.A.
GRANTED PAROLE STATUS ?
BO
NO
YES
END
8 CFR 243.4
BP
STAY OF DEPORTATION ?
NO
YES
END
I-210 OR LETTER
1 YR. INCREMENTS 8 CFR 242.5(a)(3)
BQ
P.I. NAVY DEPENDENT ?
OI 214.2(b)
COMMENSURATE WITH E.T.S. OF NAVY ENLISTEE OI 214.2(b)
I-497 OR 242.10(k)
NO
BR
8 CFR 242.5(a)(2)(viii)
COMPELLING FACTORS ?
OI 103.1(a)(1)(ii)
YES
I-210 OR LETTER
1 YR. INCREMENTS 8 CFR 242.5(a)(3)
NO
DENY VOLUNTARY DEPARTURE
END

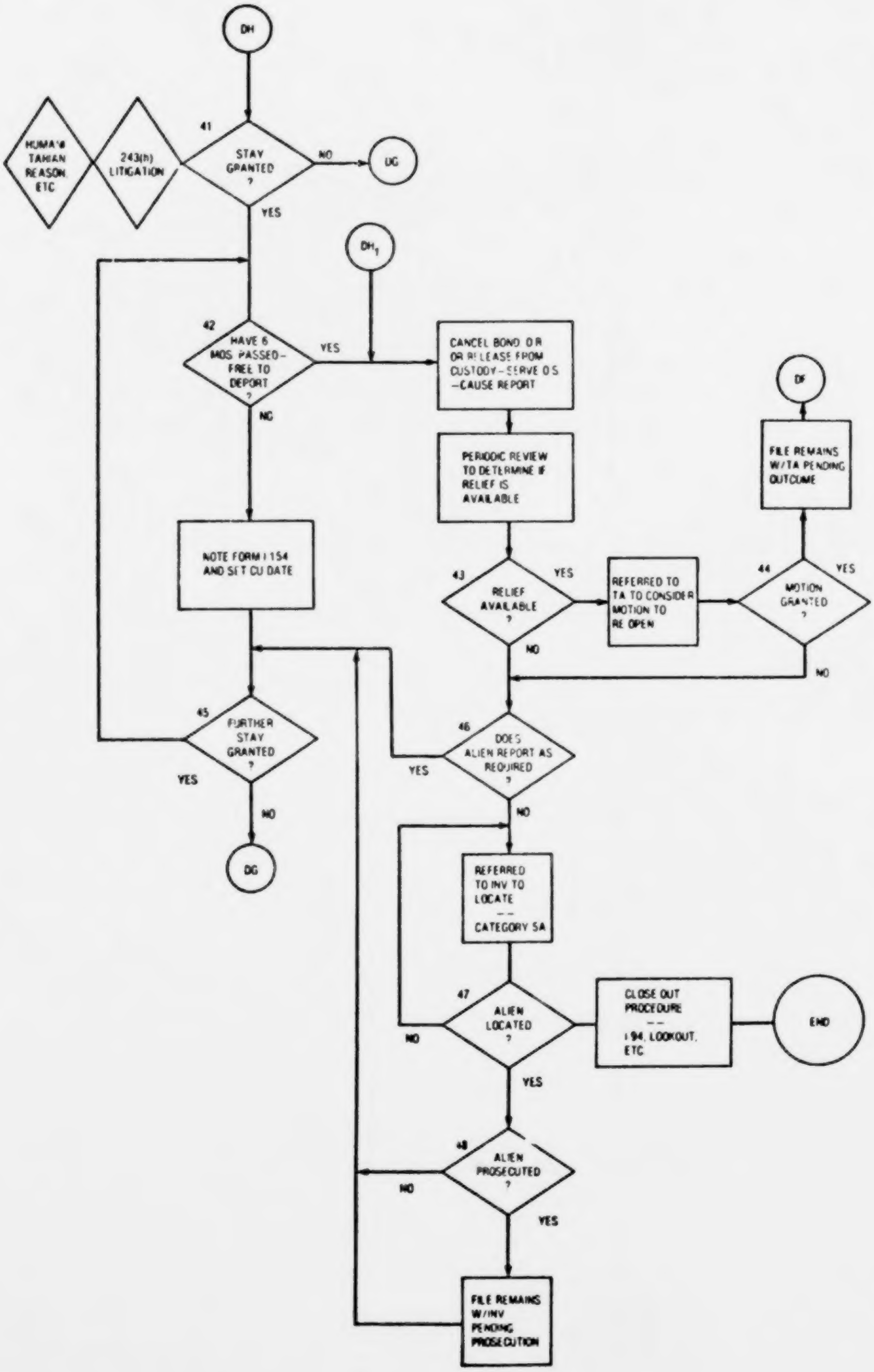

DC
I 154 RETURNED TO INV FOR COMPLETION
FORM I 154 RECEIVED FROM INV
— —
OSC ISSUED AND SERVED
13
IS FORM PROPERLY COMPLETED ?
NO
YES
IDENTIFY INS DATUM
— —
AM 2798
CUSTODY STATUS
— —
242 I.N.A.
RELEASE STATUS
— —
242 I.N.A.
INS COURT STATUS
DC₁
14
WA ISSUED SERVED ?
NO
DE
YES
15
RELEASE ON BOND ?
NO
SO₁
YES
BOND RELEASE PROCESS
16
APPEARS ON DEMAND ?
YES
DE
NO

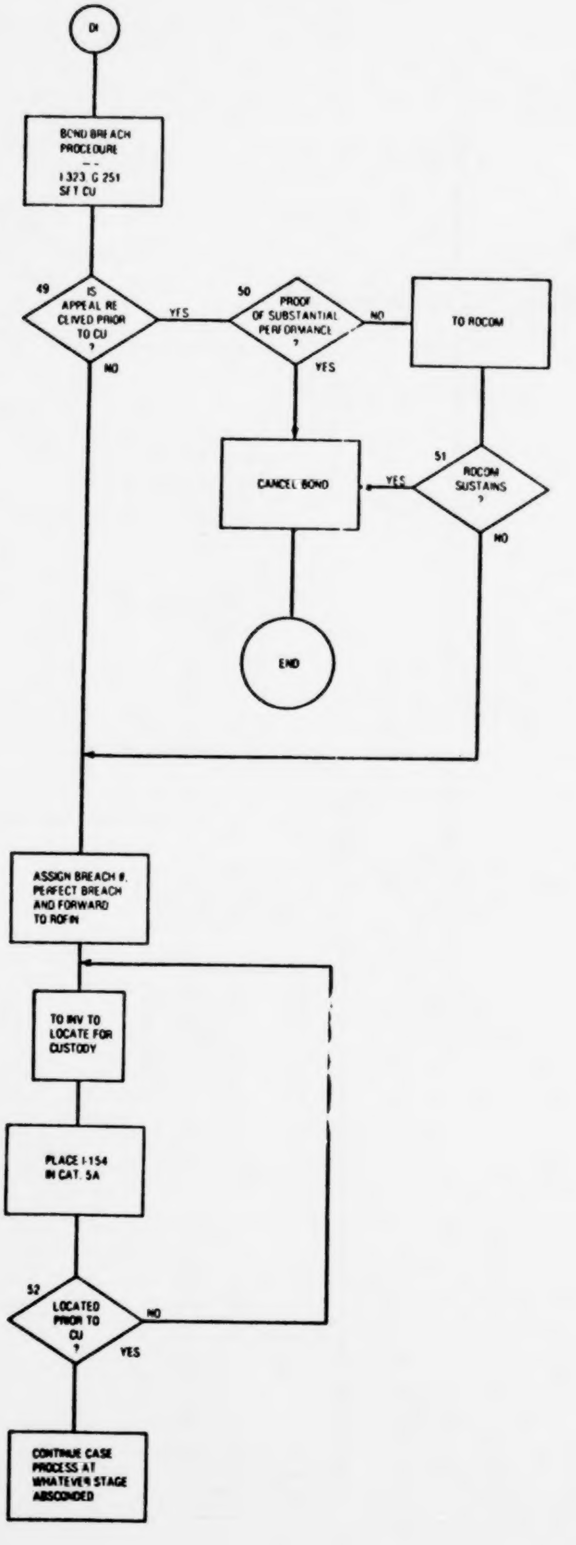

DD
DD1
RETURNED TO INV FOR PROCESSING
18
ARE NECESSARY ITEMS IN FILE PHOTOS, I 217, I 264, I 43 ?
NO
YES
REVIEW FILE TO DETERMINE TO VALIDITY AND 8 CFR 212 2e APPLICABILITY
17
IS ALIEN IN SERVICE CUSTODY ?
YES
NO
19
IS T.D VALID ?
YES
NO
MAKE T.D APPLICATION AND SET C.U DATE
20
IS T.D RECEIVED PRIOR TO CALL UP ?
YES
NO
FOLLOW UP T.D APPLICATIONS AND RESET C.U. DATE
DE


DE
21
HAS VD PRIOR TO HEARING BEEN GRANTED ?
YES
NO
PLACE FORM I 154 IN CAT. 2 AND SET CALL UP DATE
PLACE FORM I 154 IN CAT. 2 AND SET CALL UP DATE
22
DEPARTURE VERIFIED PRIOR TO CU (FRAUD) ?
NO
YES
REFERRED TO INV TO LOCATE — — CATEGORY 5A
23
ALIEN LOCATED ALIVE IN U.S. ?
NO
YES
DE
FILES REMAIN WITH TA PENDING HEARING
CLOSE OUT PROCEDURE — — SEND I 94 TO C.O.
END
24
HAS IJ ENTERED AN ORDER ?
NO
YES
CHECK PROGRESS OF CASE – NOTE FORM I 154 AND RESET CALL UP
IJ DECISION IS RECEIVED AND ORDER IS NOTED ON FORM I-154
25
DECISION APPEALED ?
YES
NO
NOTE FORM I 154 AND RESET CU
FILE REMAINS W/TA PENDING APPEAL
FILE RECEIVED, REVIEWED, I 154 NOTED AND CALL-UP IS SET
26
BIA DECISION RECEIVED PRIOR TO CU ?
YES
NO
CHECK PROGRESS OF CASE – NOTE FORM I 154 AND RESET CALL UP
END


DF
RECEIVE FINAL ORDER OF IJ, BIA, OR HIGHER COURT AND NOTE FORM I 154
END
CASE TERMINATED— SPECIAL CLOSE OUT PROCEDURE
27
IS ALIEN FOUND TO BE DEPORTABLE ?
NO
YES
28
ORDER DEPORT W/OUT VD ?
DH
YES
NO
DF1
I-94 ISSUED (IF NEC.) FORM I 154 IS NOTED "VD/DEP", CU IS SET AND I 154 IS PLACED IN CATEGORY 3
29
EXTENSION OF VD REQUESTED OR WARRANTED ?
YES
DB1
NO
30
DEPARTURE VERIFIED PRIOR TO CALL UP ?
YES
NO
ATTEMPT TO VERIFY OR LOCATE — — G-146, G 180, LETTERS, ETC.
31
DEPARTURE VERIFIED ?
YES
NO
DG
END
CLOSE OUT PROCEDURE — — SEND I 94 TO C.O


DG
ISSUE I 205, I 294 AND I 380 (IF REQUIRED)
32
HAVE 6 MOS PASSED—FREE TO DEPORT ?
YES
DH1
NO
I 166 AND/OR I-340
34
MAKE DEMAND FOR SURRENDER
NO
ALIEN IN CUSTODY ?
YES
33
HAVE 6 MOS PASSED—FREE TO DEPORT ?
YES
NO
36
DOES ALIEN SURRENDER ?
YES
35
VALID TD OBTAINABLE OR ON HAND ?
NO
NOTE FORM I-154 PLACE IN CAT. 5B SET CALL-UP
NO
YES
BAG & BAGGAGE TO INV TO LOCATE
39
CARRIER LIABLE ESCORT REQUIRED TRANS UNAVAIL ?
YES
TAKE NECESSARY ACTION TO NOTIFY CARRIER—ARRANGE FOR ESCORT, ETC.
NO
37
ALIEN LOCATED ?
NO
YES
40
ARE THERE ANY BARS ?
YES
DF
NO
CLOSE OUT PROCEDURE — — SEND I 94 TO C.O
38
NO
ALIEN ALIVE IN U.S ?
YES
PREPARE TRAVEL DETAILS—AWAIT RETURN OF EXECUTED W/D
CLOSE OUT PROCEDURE — I 94 TO C.O LOOK OUT PREPARED — FBI, SSA NOTIFIED
END


DH
41
STAY GRANTED ?
NO
UG
HUMANITARIAN REASON, ETC
243(h) LITIGATION
YES
DH1
42
HAVE 6 MOS PASSED–FREE TO DEPORT ?
YES
NO
CANCEL BOND OR OR RELEASE FROM CUSTODY–SERVE O S –CAUSE REPORT
PERIODIC REVIEW TO DETERMINE IF RELIEF IS AVAILABLE
NOTE FORM I 154 AND SET CU DATE
43
RELIEF AVAILABLE ?
YES
NO
REFERRED TO TA TO CONSIDER MOTION TO RE OPEN
44
MOTION GRANTED ?
YES
NO
FILE REMAINS W/TA PENDING OUTCOME
DF
45
FURTHER STAY GRANTED ?
YES
NO
DG
46
DOES ALIEN REPORT AS REQUIRED ?
YES
NO
REFERRED TO INV TO LOCATE
– –
CATEGORY 5A
47
ALIEN LOCATED ?
NO
YES
CLOSE OUT PROCEDURE
– –
I 94, LOOKOUT, ETC
END
48
ALIEN PROSECUTED ?
NO
YES
FILE REMAINS W/INV PENDING PROSECUTION


DI
BOND BREACH PROCEDURE
– –
I-323, G-251
SET CU
49
IS APPEAL RECEIVED PRIOR TO CU ?
YES
NO
50
PROOF OF SUBSTANTIAL PERFORMANCE ?
NO
YES
TO ROCOM
CANCEL BOND
51
ROCOM SUSTAINS ?
YES
NO
END
ASSIGN BREACH #, PERFECT BREACH AND FORWARD TO ROFIN
TO INV TO LOCATE FOR CUSTODY
PLACE I-154 IN CAT. 5A
52
LOCATED PRIOR TO CU ?
NO
YES
CONTINUE CASE PROCESS AT WHATEVER STAGE ABSCONDED

IMMIGRATION AND NATIONALITY ACT AS AMENDED THROUGH JANUARY 10, 1977

ACT OF JUNE 27, 1952

(66 STAT. 163)

WITH AMENDMENTS AND NOTES ON RELATED LAWS

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act, divided into titles, chapters, and sections according to the following table of contents, may be cited as the "Immigration and Nationality Act."

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